

**Minnesota Sentencing Guidelines Commission**  
**SPECIAL REPORT TO THE LEGISLATURE**  
**Proposal to Modify the Sentencing Guidelines**  
**January, 1995**

*MINNESOTA SENTENCING GUIDELINES COMMISSION*

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# MINNESOTA SENTENCING GUIDELINES COMMISSION

## 1994 Legislative Directive

*The sentencing guidelines commission shall evaluate whether the current sentencing guidelines and related statutes are effective in furthering the goals of protecting the public safety and coordinating correctional resources with sentencing policy. Based on this evaluation, the commission shall develop and recommend options for modifying the sentencing guidelines so as to ensure that state correctional resources are reserved for violent offenders. These options may include, but need not be limited to, changes to severity level rankings, criminal history score computations, sentence durations, the grid, and other sentencing guidelines policies.*

*The commission shall report to the legislature by January 1, 1995, concerning any modifications it proposes to adopt as a result of its study. The commission's report shall explain the rationale behind each proposed modification.*

## Commission's Motion

A Sub-Committee consisting of Judge Roger Klaphake, Jenny Walker, T. Williams, Judge Edward Wilson, and Commissioner Frank Wood met numerous times to develop and consider options to address the legislative directive. The Sub-Committee presented the options as a packaged proposal to the full Commission. The Commission reviewed the proposal and moved it forward for a Public Hearing. The Commission received both support and opposition from many citizens, policymakers, and a wide range of criminal justice professionals. Comments were received in testimony, written form, and statements over the telephone. A summary of the public hearing testimony is summarized and included at the end of this report.

The Commission considered the comments and concerns raised at the public hearing and decided to delay a final vote on the proposal and forward it to the Legislature in the form of a report. This report presents the Commission's proposal as recommendations for changes to the sentencing guidelines for the consideration of the Legislature. These recommendations work together as a balanced package toward the goals of protecting public safety and ensuring that state correctional resources are reserved for violent offenders. Recommendations include changes to the guidelines that will result in tougher sentences for person offenders and less emphasis on prison for non-person offenders and offenders with non-violent criminal histories. This package as a whole will result in a significant reduction in the need for additional prison space in the future. It is important to understand that changes to any of the components of the package will affect the overall impact.



The Commission passed the following motion on an eight to three majority vote:

### **Introduction to the Motion**

It is ultimately the policymakers' (Governor and Legislature) decision as to how they intend to identify the revenues and distribute those revenues to reduce crime and violence in our society. Minnesota felons serve some of the toughest sentences in the nation. Therefore, Minnesota is in an excellent position to now balance the state's investment in prevention and long neglected crowded caseloads, community supervision, programs and alternative community-based sanctions with our investment in our most expensive, after-the-fact sanction - - prisons.

### **Motion**

Move to delay the vote on the formal adoption of the Commission's proposal and present the proposal to the Legislature in the form of a report that will include a discussion of the proposal and the supporting documentation and will highlight the following points:

- 1) The Commission supports legislative consideration of the proposed options but is not formally adopting them at this time. The Commission is concerned that it would be too great a burden to local units of government to formally adopt the proposal without the certainty of funding;
- 2) The Commission believes that while the proposal represents a set of options for modifying the sentencing guidelines, these options work together as a balanced package toward the goals of protecting the public safety and ensuring that state correctional resources are reserved for violent offenders; and
- 3) The Commission believes that the proposal merits further discussion and consideration by policymakers.

Also include in the report: 1) detailed information on the impact to local units of government for each county; 2) additional detail on how the prison space savings relate to projected needs and Department of Corrections' plans to add more beds; and 3) more information on how surrounding states compare to Minnesota with regard to the length of sentences served by drug offenders.

## Summary of Proposed Options to Modify the Sentencing Guidelines

### ▣ Create a New Severity Level Between Current Severity Level VI and VII

Create a new severity level VI with a presumptive duration of 36 months at a zero criminal history score and a presumptive disposition of prison, regardless of criminal history. The new severity level would include Assault Second Degree with a Firearm (moved up from the current severity level VI) and Second Degree Controlled Substance Crimes (moved down from severity level VII). The current severity level I would be eliminated; offenses currently at that level would be moved up to the current severity level II. In addition, First Degree Controlled Substance Crimes would be moved from severity level VIII to severity level VII. The severity levels would be renumbered so that levels I through X would still appear on the grid. The weights used to calculate criminal history will change only slightly to allow the new severity level V prior offenses to receive 1½ points.

### ▣ Adjust Severity Levels to Reflect the Commission's Ranking Principles

Adjust the severity level rankings of a number of offenses in severity levels I-VI to further differentiate crimes against persons from property crimes. Severity levels would be increased for approximately 40 crimes, including Assault 3, certain provisions of Third and Fourth Degree Criminal Sexual Conduct, and Criminal Vehicular crimes involving injury and a number of offenses involving weapons. Eliminate the distinction between Theft and Theft Related Offenses. For consistency, also adjust the rankings for a few other property crimes (e.g., Receiving Stolen Property, Motor Vehicle Theft and Motor Vehicle Use without Consent).

### ▣ Limit Misdemeanor/Gross Misdemeanor Point

Limit the Misdemeanor/Gross Misdemeanor List to person and weapon offenses and limit eligibility for a Misdemeanor/Gross Misdemeanor Point to those with a current person offense.

### ▣ Adjust Increases in Durations Across Criminal History

Provide for increases in durations across criminal history at severity levels I-VI that are at uniform intervals, consistent with increases at severity levels VII and above. Durations across history scores would increase by increments of two months at new severity levels I and II; three months at new severity level III; five months at new severity level IV; six months at new severity level V and seven months at the newly created severity level VI.

### ▣ Reverse the Order of the Severity Levels on the Grid

In conjunction with the above substantive changes, the grid would be modified to display severity levels in descending order. This will clearly show the guidelines emphasis on reserving prison resources for person offenders and is similar to guideline grid used in a number of other states.

The following grid shows the new severity level, the adjusted durations and the placement of severity levels in descending order.



# PROPOSED

## IV. SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with nonimprisonment felony sentences are subject to jail time according to law.

### CRIMINAL HISTORY SCORE

| SEVERITY LEVEL OF CONVICTION OFFENSE<br>(Common offenses listed in italics)      | 0               | 1               | 2              | 3              | 4              | 5              | 6 or more      |
|--|-----------------|-----------------|----------------|----------------|----------------|----------------|----------------|
| <i>Murder, 2nd Degree (with intent)</i>  | 306<br>299-313  | 326<br>319-333  | 346<br>339-353 | 366<br>359-373 | 386<br>379-393 | 406<br>399-413 | 426<br>419-433 |
| <i>Murder, 3rd Degree<br/>Murder, 2nd Degree (felony Murder)</i>                 | 150<br>144-156  | 165<br>159-171  | 180<br>174-186 | 195<br>189-201 | 210<br>204-216 | 225<br>219-231 | 240<br>234-246 |
| <i>Criminal Sexual Conduct, 1st Degree<br/>Assault, 1st Degree</i>               | 86<br>81-91     | 98<br>93-103    | 110<br>105-115 | 122<br>117-127 | 134<br>129-139 | 146<br>141-151 | 158<br>153-163 |
| <i>Aggravated Robbery<br/>Controlled Substance Crimes, 1st Degree</i>            | 48<br>44-52     | 58<br>54-62     | 68<br>64-72    | 78<br>74-82    | 88<br>84-92    | 98<br>94-102   | 108<br>104-112 |
| <i>Assault, 2nd Degree w/Firearm<br/>Controlled Substance Crimes, 2nd Degree</i> | 36<br>33-39     | 43<br>40-46     | 50<br>47-53    | 57<br>54-60    | 64<br>61-67    | 71<br>68-74    | 78<br>75-81    |
| <i>Criminal Sexual Conduct, 2nd Degree (a) &amp; (b)</i>                         | 21              | 27              | 33             | 39<br>37-41    | 45<br>43-47    | 51<br>49-53    | 57<br>55-59    |
| <i>Residential Burglary<br/>Simple Robbery</i>                                   | 18              | 23              | 28             | 33<br>31-35    | 38<br>36-40    | 43<br>41-45    | 48<br>46-50    |
| <i>Nonresidential Burglary</i>   | 12 <sup>1</sup> | 15              | 18             | 21             | 24<br>23-25    | 27<br>26-28    | 30<br>29-31    |
| <i>Theft Crimes (Over \$2,500)</i>   | 12 <sup>1</sup> | 13              | 15             | 17             | 19<br>18-20    | 21<br>20-22    | 23<br>22-24    |
| <i>Theft Crimes (\$2500 or less)<br/>Check Forger (\$200-\$2500)</i>             | 12 <sup>1</sup> | 12 <sup>1</sup> | 13             | 15             | 17             | 19             | 21<br>20-22    |

Presumptive stayed sentence: at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to a state prison. These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault). See sections II.C, **Presumptive Sentence** and II.E, **Mandatory Sentences**.

Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section II.E, **Mandatory Sentences** for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.

<sup>1</sup> One year and one day



### **Reduced Complexity**

The Commission recognizes that the guidelines are complex and that to significantly change policy can cause confusion and frustration among practitioners. While the changes will require some relearning, no new complex policies are proposed and several of the recommendations included in the package will actually reduce the complexity of the sentencing guidelines. In addition, the Commission now has a full-time trainer on staff to assist and train practitioners and ease implementation.

### **Critical to Adequately Fund Local Correctional Resources**

The reality of these proposals is that significantly more property offenders will be recommended a stayed sentence under the guidelines. The Commission believes it is critical to adequately fund local correctional resources, including probation services and incarceration facilities, and it is critical that local jurisdictions develop rational policies to address the appropriate use of local correctional resources.

It is far more economical to fund probation services than prisons when focusing on non-violent offenders. For example, it is nearly triple the cost to give a property offender a 16 month term of imprisonment with 8 months on supervised release than to place that offender on probation for three years, with six months to serve in a local jail. Also, the offender on probation would be in a better position to pay a fine, restitution and do community work service. This example assumes a reasonable probation caseload size of 60 property offenders per agent.

If the state funded the counties for the agents necessary to place additional property offenders on probation, including funding for the six months in jail, the state would still save approximately 1.3 million dollars in prison operating costs each year for every 60 property offenders placed on probation rather than prison.

More information on the specific impact of the proposal on each county is found in the section titled "Impact on Correctional Resources" below.



## Evaluation of the Sentencing Guidelines

### Public Safety

The 1994 Legislature directed the Commission to evaluate whether the current sentencing guidelines and related statutes are effective in furthering the goals of protecting the public safety and coordinating correctional resources with sentencing policy. The Sentencing Guidelines recommend prison sentences for those convicted of more serious offenses or those who have longer criminal histories. This policy generally translates into reserving the majority of available prison space for person offenders as opposed to non-person offenders. It is believed that public safety can best be served by ensuring that prison space is available to lock-up those offenders who personally harm others. Property offenders and other non-violent offenders can be punished with local community-based sanctions (including local incarceration), where a greater emphasis can be placed on restitution and restoring the victim and the community.

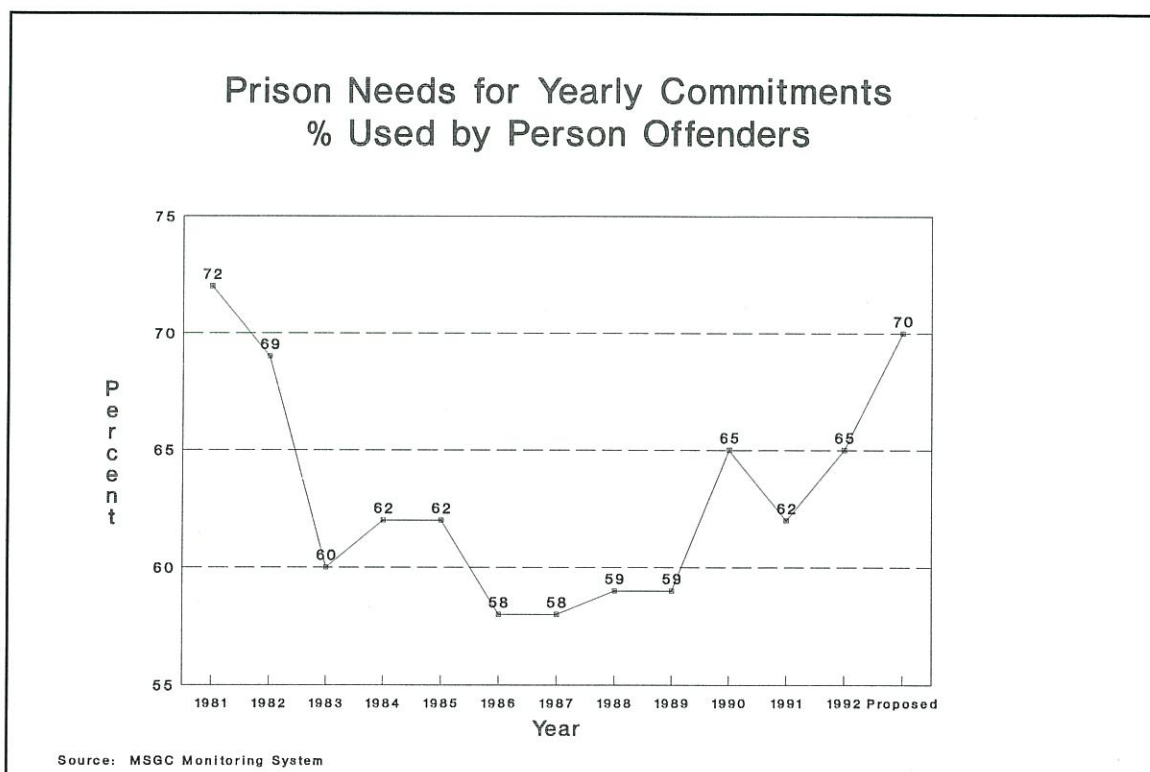
In 1981, the first full year of sentences under the guidelines, person offenders accounted for 72% of the prison space needed to incarcerate those committed to prison that year. However, due to the criminal history score policies of the guidelines, more prison space was increasingly needed for property offenders. By 1986 person offenders accounted for only 58% of the prison needs. We can see the effects of criminal history on property offenders by examining the increased percent of property offenders who were recommended prison over time. In 1981, approximately 7% of property offenders were recommended prison under the guidelines compared to over 17% by 1992. In addition, sentencing policy surrounding drug offenders also shifted toward greater use of prison in the late 1980s. In 1981, only 1% of drug offenders were recommended prison under the guidelines compared to nearly 20% in 1992.

These trends were reversed somewhat after 1989 when policies shifted toward longer prison sentences for violent offenders and less emphasis to prior low level property crimes in calculating criminal history scores. In 1992, person offenders accounted for 65% of the prison space needed to incarcerate those committed to prison that year. However, the number was still down from the 1981 figure of 72% and the percentage of property and drug offenders who were recommended prison under the guidelines remained high.

The Commission previously adopted a set of Severity Level Ranking Principles that generally support ranking person offenses higher than non-person crimes. The Commission evaluated the current severity levels rankings and determined whether the rankings needed to be adjusted to better reflect the Commission's principles. The Commission also evaluated other aspects of the guidelines to determine whether other changes could be made that would further the goal of public safety. The package of recommendations proposed by the Commission will reserve a greater proportion of prison space for person offenders. Offenders convicted of crimes against persons will account for 70% of the prison space needed to incarcerate those committed to prison each year. While new prisons will still need to be built, the space will primarily be used to incarcerate violent offenders and will advance the goal of public safety. In addition, the percent of property offenders recommended prison under the guidelines will be more comparable to the original policy of the guidelines. Drug offenders will continue to be recommended prison at the same rate but for less time.



The chart below examines the prison needs for yearly commitments over time by displaying the percent of space needed for person offenders and shows a clear rise in this percentage under the proposal.



### **Coordinating Correctional Resources with Sentencing Policy**

Sentencing guidelines introduce structure and predictability into the sentencing decision and allow sentencing policy to be coordinated with correctional resources. The Commission is able to provide the Legislature with critical information on the impact of proposed legislation and sentencing guidelines modifications on prison space because we can recognize how policy changes will affect current policy and practice. Essential to this capability is the sentencing guidelines monitoring system. We cannot determine with much reliability the impact of proposed policy changes on local resources because there are no statewide guidelines or structure to help us predict the sentencing decisions and because the data on local sanctions are not as detailed and complete.

As demonstrated by this report, the ability to coordinate correctional resources with sentencing policy is one of the most important features of sentencing guidelines because it offers clear choices to policy makers regarding the use of expensive prison resources. Minnesota has avoided many of the problems of prison crowding faced by most states in this country because of its commitment to coordinating sentencing policy and correctional resources. In response to Federal court orders and public outcry over the early release of prisoners, many other states have developed structured sentencing policies to allow them to gain control over their prison populations. The modifications proposed by the Commission will help ensure that prison space is available for violent offenders and ensure that Minnesota will not have to resort to emergency early release mechanisms that can put public safety at risk.



## **Commission Recommendations and Rationale**

### **Create a New Severity Level Between Current Severity Level VI and VII**

The Commission revisited the idea of a new severity level between the current levels VI and VII and decided that such a change would contribute to a more balanced package of recommendations. The new severity level presumes prison regardless of criminal history and eliminates the jump in the presumptive sentence that currently exists ( 21 months stayed at severity level VI to 48 months in prison at severity level VII). The new severity level VI begins with a presumptive duration of 36 months and increases by 7 months for each additional criminal history point.

### **Clarify Current Policy on Assault with Firearm**

One advantage of this new level is that it allows the Commission to clarify current policy regarding Assault 2nd Degree involving a firearm. This offense always carries a 36 month mandatory minimum in prison but because it is ranked at the current severity level VI the offense appears to call for a 21 month stayed sentence. A great deal of confusion arises among prosecutors, judges, and probation officers as to the intended presumptive sentence. Ranking Assault 2 with a firearm at the new severity level VI will more clearly reflect the Commission's current policy that the mandatory minimum of 36 months in prison is the presumptive sentence.

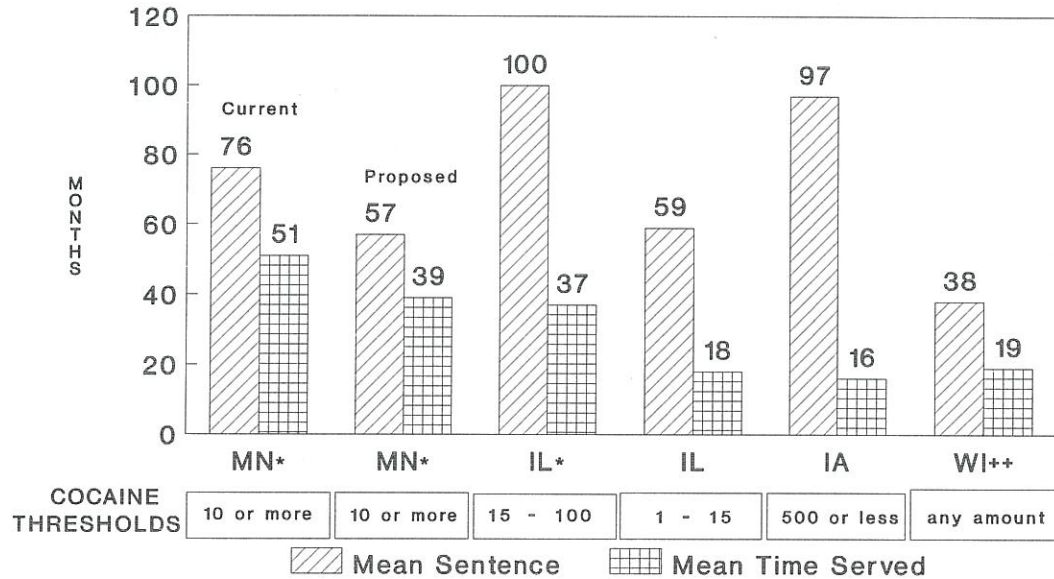
### **More Proportional Severity Level Rankings for Drug Crimes**

Another advantage of this new severity level is the ability to rank drug offenders more proportionally but still recommend prison sentences. The Commission recommends moving Controlled Substance Crimes in the 2nd Degree from severity level VII to the new severity level VI and moving Controlled Substance Crimes in the 1st Degree from severity level VIII to the new severity level VII. These changes maintain presumptive prison sentences for the most serious drug offenders, yet will also allow for more first time drug offenders to become eligible for the Department of Corrections Challenge Incarceration Program.

Our most recent study on drug offenders indicates that judges are frequently departing from presumptive sentences both with regard to the disposition and the duration. For example, with regard to offenders convicted of 1st or 2nd Degree Controlled Substance Crimes who have no criminal history score, the downward dispositional departure rate is 70%. Even when these drug offenders are sentenced to prison, 59% receive a downward durational departure. These sentencing practices suggest strong disagreement with the guidelines and state law.

Also, a study we conducted in 1992 that compares Minnesota's drug laws and sentencing policies with other states indicates that Minnesota is considerably tougher than most other states; particularly because in Minnesota the drug amounts needed to escalate an offense to a higher degree are very small. We updated the data on time served in prison for comparable drug crimes in a few surrounding states. Drug offenders serve more time in prison in Minnesota under the current sentencing guidelines and under the Commission's proposal for 1st Degree Controlled Substance Crimes than for comparable drug crimes in any of these other states. Some states did not mandate or recommend prison sentences for crimes involving 10 grams of cocaine (minimum needed for 1st Degree Controlled Substance Crimes). This information is graphed below.

### SENTENCING FOR COCAINE OFFENSES SENTENCE LENGTH AND TIME SERVED SELECTED MIDWESTERN STATES



### Weighting Scheme for Prior Felonies

The Commission also recommends eliminating severity level I to allow the grid to remain at a total of ten severity levels. This change has the effect of increasing the severity level of all crimes currently ranked at severity level I to severity level II. However, there are relatively few convictions for these crimes and the presumptive disposition would not change. It is recommended that the weighting scheme remain the same with one exception. To continue to emphasize prior violent offenses, the weight for those crimes now ranked at severity level V (formerly VI) will remain at 1½ points. The weighting scheme under this new grid would be: 2 points for Murder 1 and severity levels VIII-X; 1½ points for severity levels V-VII; 1 point for severity level III-IV; and ½ point for severity level I-II. This weighting scheme, coupled with other ranking changes described below, will reduce the complexity in completing sentencing worksheets because probation officers will not need to gather as much specific information about the amount of loss involved in a prior theft crime or the amount of drug involved in a prior drug crime in order to determine the appropriate weight.



## **Adjust Severity Levels to Reflect the Commission's Ranking Principles**

Over the last several years, the Commission and the Legislature have focused a great deal of attention on the appropriate sanctions for the most serious violent crimes. The guidelines durations doubled for offenses at severity levels VII through X and numerous lengthy mandatory sentences were enacted by the Legislature for certain heinous and repeat murderers and rapists. Less attention was given to those crimes against persons that were ranked at the lower severity levels. The Commission re-examined the rankings at severity levels I-VI by focusing on the directive of the Legislature to consider the goal of public safety and the Commission's adopted Ranking Principles that emphasize crimes against persons as the offenses deserving the more serious sanctions.

The Commission recommends numerous changes to the severity level rankings of crimes at severity levels I-VI to further differentiate crimes against persons from property crimes. The attached Offense Severity Level Reference Table highlights these recommendations. The Commission proposes to increase the severity level of approximately 40 different crimes against persons. The more prominent changes include increasing the severity level for Assault 3, certain provisions of Criminal Sexual Conduct 3 & 4, and Criminal Vehicular crimes involving injury. The Commission also recommends ranking changes to eliminate the distinction between Theft and Theft Related Offenses. They believe it is difficult to justify the need to distinguish these various types of theft crimes and that these distinctions are confusing. This change will reduce some of the complexities of the guidelines. While the Commission is recommending lowering the severity level of a few other property crimes to rank them proportionally to the theft crimes, there are no recommendations to lower any crimes involving weapons. In fact, most of the weapons crimes are recommended to be increased; e.g., Felons in Possession of a Firearm and Furnishing a Firearm to a Minor.

## **Limit Misdemeanor/Gross Misdemeanor Point**

The current policy on misdemeanors has a greater impact on non-person offenders than person offenders and can be very time-consuming for practitioners to properly implement. Probation officers must examine each specific prior misdemeanor to determine if it is included on the Commission's list of eligible offenses. This is particularly difficult for prior property type misdemeanors. Information systems currently do not offer access to misdemeanor records and probation officers must depend on manual record searches and the offender's own admissions. Philosophically, the Commission decided that while prior misdemeanors may be important in determining the amount of jail time an offender should receive as a condition of probation, they should not be the determining factor in whether a non-person offender should be sentenced to prison. However, the Commission did believe that it would be important to consider prior person type misdemeanors for person offenders because this would indicate a continuing pattern of violent behavior.

The Commission recommends that the Misdemeanor/Gross Misdemeanor Point only apply to person offenders and that the list of eligible prior misdemeanor and gross misdemeanor crimes be reduced to include only violent crimes and crimes involving weapons. Prior DWI's would continue to count as two units when the current offense is Criminal Vehicular Homicide or Injury. This change to the guidelines would not only be philosophically sound, it would also significantly reduce the amount of work probation officers have to spend researching misdemeanor records and would allow them to dedicate more time to this activity for violent offenders.

### **Adjust Increases in Durations Across Criminal History**

In 1989, when the Commission increased durations in severity levels VII through X, they changed the way the criminal history score affects the recommended duration. Under these amended guidelines, the recommended duration increases by 20 months for each criminal history point at severity level X, 15 months for each criminal history point at severity level IX, 12 months at severity level VIII, and 10 months at severity level VII.

Currently, recommended durations at severity levels I through VI, do not increase at uniform intervals. For example, at severity level five, durations increase 4 months between history scores one and two; 3 months between history scores two and three; and 8 months between history scores three and four.

The Commission recommends that the grid reflect a consistent approach to increasing durations across criminal history. Specifically, as reflected on the new recommended grid with the new severity level VI, durations across history scores would increase by increments of: two months at severity levels I and II; three months at severity level III; five months at severity level IV; six months at severity level V; and seven months at severity level VI.

### **Reverse the Order of the Severity Levels on the Grid**

The Commission recognizes that the guidelines, to a large extent, already emphasize public safety and the reserving of prison space for serious person offenders and that this philosophy is reflected in the sentencing guidelines grid. However, because of the way the grid is designed, it is the less serious offenses that are first visually noticed.

The Commission recommends that the grid be modified to display severity levels in descending order. This will clearly show a greater emphasis on the use of prison resources for the more violent offenders and is similar to grids used by other states that developed guidelines after Minnesota.



## ADJUSTED OFFENSE SEVERITY REFERENCE TABLE

First Degree Murder is excluded from the guidelines by law, and continues to have a mandatory life sentence.

- Indicates that the offense is a person offense, as listed in the **Person Crime Offense List** included in the meeting folder.
- + - A plus/minus sign followed by a number indicates that the offense severity level ranking has been adjusted as many severity levels upward or downward as specified by the number.

*Severity levels VIII through X contain the most serious crimes against persons. Based on the Commission's ranking principles, these crimes should generally be treated more harshly than drug crimes. Therefore, the Commission proposes to move the two drug crimes currently ranked at severity level VIII to level VII where the guidelines will continue to presume prison. No other changes are proposed at these levels and all remaining offenses are person crimes that involve death, great bodily harm, or serious sexual assault.*

- X
  - Adulteration - 609.687, subd. 3(1)
  - Murder 2 - 609.19(1)
  - Murder 2 of an Unborn Child - 609.2662(1)

- IX
  - Murder 2 - 609.19 (2) & (3)
  - Murder 2 of an Unborn Child - 609.2662(2)
  - Murder 3 - 609.195(a)
  - Murder 3 of an Unborn Child - 609.2663

- VIII
  - Assault 1 - 609.221
  - Assault 1 of an Unborn Child - 609.267
  - Criminal Sexual Conduct 1 (sexual penetration) - 609.342
  - Death of an Unborn Child in the Commission of Crime - 609.268, subd. 1
  - Kidnapping (w/great bodily harm) - 609.25, subd. 2(2)
  - Manslaughter 1 - 609.20(1) & (2)
  - Manslaughter 1 of an Unborn Child - 609.2664(1) & (2)
  - Murder 3 - 609.195(b)
  - Prostitution (Patron) - 609.324, subd. 1(a)
  - Receiving Profit Derived from Prostitution - 609.323, subd. 1
  - Solicitation of Prostitution - 609.322, subd. 1

*The Commission proposes to rank the two most serious drug crimes at this level. No other changes are proposed for this level and the remaining offenses are all crimes against persons involving either a lower level of harm or culpability than those person crimes ranked at higher severity levels.*

- Aggravated Robbery - 609.245, subd. 1
- Arson 1 - 609.561
- Burglary 1 - 609.582, 1(b) & (c)
- 1 Controlled Substance Crime in the First Degree - 152.021
- Criminal Sexual Conduct 1 (sexual contact - victim under 13) - 609.342
- Criminal Sexual Conduct 2 - 609.343, 1(c), (d), (e), (f), & (h)
- Criminal Sexual Conduct 3 - 609.344, subd. 1(c), (d), (g), (h), (i), (j), (k) & (l)
- Criminal Vehicular Homicide and Injury - 609.21, subd. 1 & 3
- VII ■ Fleeing a Peace Officer (resulting in death) - 609.487, subd. 4(a)
- Great Bodily Harm Caused by Distribution of Drugs - 609.228
- 1 Importing Controlled Substances Across State Borders - 152.0261
- Kidnapping (not in safe place or victim under 16) - 609.25, subd. 2(2)
- Malicious Punishment of Child (great bodily harm) - 609.377
- Manslaughter 1 - 609.20 (3) & (4)
- Manslaughter 1 of an Unborn Child - 609.2664(3)
- Manslaughter 2 - 609.205(1)
- Manslaughter 2 of an Unborn Child - 609.2665(1)
- Solicitation of Prostitution (force) - 609.322, subd. 1a (2) & (4)(b)

*This is a new severity level proposed by the Commission that would presume a prison sentence regardless of criminal history. The crimes ranked at this level include the second degree drug crimes and all assault type offenses involving a firearm. This level allows the 2nd degree drug crimes to be treated proportionally less severe than 1st degree drug crimes yet still provides for a prison sentence. The new level also more clearly reflects the Commission's current policy that the mandatory minimum of 36 months in prison is the presumptive sentence for Assault in the Second Degree with a Firearm.*

- +1 Assault 2 (firearm) - 609.222
- 1 Controlled Substance Crime in the Second Degree - 152.022
- VI ■ +1 Discharge of Firearm at Occupied Transit Vehicle/Facility - 609.855, Subd. 5
- +1 Drive-By Shooting (toward a person or occupied motor vehicle or building) - 609.66, subd. 1e (a)



*Based on the Ranking Principles, the Commission increased by one severity level several person offenses. The intent is to create a greater distinction between person and property crimes throughout the severity scale. The only property crime ranked at this level is Burglary 1 which involves an occupied dwelling. There are also a few drug crimes ranked here and one serious public endangerment crime. The crime of Accidents noted at this level involves a situation where someone causes an accident that results in death but the person does not stop or report the accident. This offense was previously ranked more closely to Criminal Vehicular Homicide before the ranking for CVH was increased and this two step increase brings this offense back in line with CVH.*

- +2 Accidents - 169.09, subd. 14(a) (1)
- Aggravated Robbery 2 - 609.245, subd. 2
- Assault 2 (non-firearm) - 609.222
- Burglary 1 - 609.582, subd. 1(a)
- Controlled Substance Crime in the Third Degree - 152.023
- Criminal Sexual Conduct 2 - 609.343, subd. 1(a), (b), & (g)
- +1 Criminal Sexual Conduct 3 - 609.344, subd. 1(b), (e), & (f)
- Criminal Sexual Conduct 4 - 609.345, 1(c), (d), (g), (h), (i), (j), (k), & (l)
- +1 Criminal Vehicular Homicide and Injury - 609.21, subd. 2 & 4
- Escape from Custody - 609.485, subd. 4(5)
- V Explosive Device or Incendiary Device - 609.668, subd. 6
- Failure to Affix Stamp on Cocaine - 297D.09, subd. 1
- Failure to Affix Stamp on Hallucinogens or PCP - 297D.09, subd. 1
- Failure to Affix Stamp on Heroin - 297D.09, subd. 1
- Failure to Affix Stamp on Remaining Schedule I & II Narcotics - 297D.09, subd. 1
- Fleeing Peace Officer (great bodily harm) - 609.487, subd. 4(b)
- Kidnapping (safe release/no great bodily harm) - 609.25, subd. 2(1)
- +1 Manslaughter 2 - 609.205 (2), (3), & (4)
- +1 Manslaughter 2 of an Unborn Child - 609.2665 (2), (3), & (4)
- +1 Prostitution (Patron) - 609.324, subd. 1 (b)
- +1 Receiving Profit Derived from Prostitution - 609.323, subd. 1a
- +1 Riot 1 - 609.71, subd. 1
- +1 Solicitation of Prostitution - 609.322, subd. 1a (1), (3), & (4)(a)&(c)
- +1 Tampering with Witness - 609.498, subd. 1

*The Commission proposes that those person crimes that involve substantial bodily harm be raised by one level to this severity level that includes Simple Robbery and Residential Burglary. Again, the intent is to further distinguish person crimes from property crimes according to the Ranking Principles. While there are some property crimes at this level, they tend to be the most serious property crimes such as Residential Burglary, Arson 2, and Thefts and Check Forgeries over \$35,000. Certain Price Fixing provisions and Theft over \$35,000 were lowered one level to this severity level in keeping with the decision to eliminate the distinction between Theft and Theft Related Crimes..*

|      |  |
|------|--|
|      | Arson 2 - 609.562  |
| ■ +1 | Assault 2 of an Unborn Child - 609.2671  |
| ■ +1 | Assault 3 - 609.223, subd. 1   |
|      | Burglary - 609.582, subd. 2 (a) & (b)  |
|      | Check Forgery over \$35,000 - 609.631, subd. 4 (1)   |
| ■ +1 | Criminal Sexual Conduct 4 - 609.345, subd. 1(b), (e), & (f)                                  |
| ■ +1 | False Imprisonment (substantial bodily harm) - 609.255, subd. 3                              |
|      | Financial Transaction Card Fraud over \$35,000 - 609.821, subd. 3 (1) (i)                    |
| ■ +1 | Fleeing a Peace Officer (substantial bodily harm) - 609.487, subd. 4 (c)                     |
| ■    | Harassment/Stalking (pattern of harassing conduct) - 609.749, subd. 5                        |
| ■ +1 | Injury of an Unborn Child in Commission of Crime - 609.268, subd. 2                          |
| ■ +1 | Malicious Punishment of Child (substantial bodily harm) - 609.377                            |
| IV   | Negligent Discharge of Explosive - 299F.83   |
|      | Perjury - 609.48, subd. 4 (1)  |
|      | Possession or Use (unauthorized) of Explosives - 299F.79; 299F.80, subd. 1; 299F.82, subd. 1 |
| -1   | Price Fixing/Collusive Bidding - 325D.53, subd. 1 (2) (a)                                    |
|      | Price Fixing/Collusive Bidding - 325D.53, subd. 1 (1), and subd. 1 (2) (b) & (c)             |
| ■    | Simple Robbery - 609.24  |
| -1   | Theft over \$35,000 - 609.52, subd. 3 (1)  |

*This severity level contains a mix of person, property, and weapons related offenses. The Commission proposes to increase by one level many of the person and weapons offenses displayed at this level and the property crimes included here tend to be more serious because they involve stealing weapons, drugs, or stealing directly from a person. This level also includes non-residential burglaries. The Commission proposes increasing the severity level of Escape from Custody because it is more closely associated with other prison/jail management crimes already ranked at this level; i.e., Contraband into Prison and Dangerous Weapon into Jail. These types of crimes do carry potential for serious personal harm either to correctional personnel or other inmates.*

- +1 Accidents - 169.09, subd. 14 (a) (2)
- Adulteration - 609.687, subd. 3 (2)
- Bribery - 609.42; 90.41; 609.86
- Bring Contraband into State Prison - 243.55
- Bring Dangerous Weapon into County Jail - 641.165, subd. 2 (b)
- Burglary 2 - 609.582, subd. 2 (c) & (d)
- Burglary 3 - 609.582, subd. 3
- +1 Coercion - 609.27, subd. 1(1)
- Controlled Substance Crime in the Fourth Degree - 152.024
- +1 Criminal Vehicular Homicide and Injury - 609.21, subd. 2a
- +1 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries - 307.08, subd. 2
- +1 Dangerous Weapons/Certain Persons Not to Have Firearms - 609.67, subd. 2; 624.713, subd. 1 (a) & (b); 609.165, subd. 1b
- +1 Depriving Another of Custodial or Parental Rights - 609.26, subd. 6 (2)
- +1 Drive-By Shooting (unoccupied Motor vehicle or building) - 609.66, subd. 1e (a)
- +1 Escape from Custody - 609.485, subd. 4 (1)
- +1 False Imprisonment - 609.255, subd. 2
- +1 Firearm Silencer (public housing, school, or park zone) - 609.66, subd. 1a (b)(1)
- Harassment/Stalking (aggravated violations) - 609.749, subd. 3
- III ■ Harassment/Stalking (2nd or subsequent violation) - 609.749, subd. 4
- Negligent Fires - 609.576, subd. 1 (a)
- Perjury - 290.53, subd. 4; 300.61; & 609.48, subd. 4 (2)
- +1 Prostitution (Patron) - 609.324, subd. 1 (c)
- +1 Receiving Profit Derived From Prostitution - 609.323, subd. 2
- +1 Receiving Stolen Property (firearm) - 609.53
- Security Violations (over \$2,500) - 80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3 (a) & (b)
- +1 Solicitation of Children to Engage in Sexual Conduct - 609.352, subd. 2
- +1 Solicitation of Prostitution - 609.322, subd. 2
- Terroristic Threats - 609.713, subd. 1
- Theft From Person - 609.52
- Theft of Controlled Substances - 609.52, subd. 3 (2)
- Theft of Firearm - 609.52, subd. 3 (1)
- Theft of Incendiary Device - 609.52, subd. 3 (2)
- Use of Drugs to Injure or Facilitate Crime - 609.235
- Weapon in Courthouse or Certain State Buildings - 609.66, subd. 1g



*This severity level contains most of the property crimes that involve a loss over \$2,500. Several crimes involving furnishing or possessing certain weapons were raised one level. There are only two person crimes at this level, Accidents and Coercion, which are the less serious provisions of these crimes (other provisions are ranked higher). The Commission proposes to combine Theft and Theft Related Crimes at this level (titled Theft Crimes) because they believe it is difficult to justify the need to distinguish recommended penalties when the type of harm and culpability of the offender are basically the same for both groups of theft type crimes. Also, the Commission proposes to lower several severity levels for certain property crimes involving stolen goods and precious metals. In 1989, most of the Receiving Stolen Property crimes were amended by the Legislature to carry the same statutory penalties as Theft and the Commission reranked the stolen property crimes accordingly. There were these few remaining crimes of a similar nature that were overlooked at that time and the Commission believes they should be ranked the same as theft crimes.*

- +1 Accidents - 169.09, subd. 14 (a) (3) & (b) (1)
- Arson 3 - 609.563
- 3 Bringing Stolen Goods into State (over \$2,500) - 609.525
- Check Forgery (over \$2,500) - 609.631, subd. 4 (2)
- Coercion (over \$2,500) - 609.27, subd. 1 (2), (3), (4), & (5)
- Damage to Property - 609.595, subd. 1 (1)
- Dangerous Smoking - 609.576, subd. 2
- Dangerous Trespass, Railroad Tracks - 609.85(1)
- +1 Discharge of Firearm (public housing, school, or park zone) - 609.66, subd. 1a (b) (1)
- False Traffic Signal - 609.851, subd 2
- +1 Firearm Silencer - 609.66, subd. 1a (a) (1)
- +1 Furnishing a Dangerous Weapon - 609.66, subd. 1c
- +1 Furnishing Firearm to Minor - 609.66, subd. 1b
- Gambling Taxes - 297E.13, subd. 1-4
- Hinder Logging (great bodily harm) - 609.591, subd. 3 (1)
- Intentional Release of Harmful Substance - 624.732, subd. 2
- Obstructing Legal Process, Arrest, or Firefighting - 609.50, subd. 2
- Possession of Burglary Tools - 609.59
- Possession of Shoplifting Gear - 609.521
- II
- 3 Precious Metal Dealers, Receiving Stolen Goods (over \$2,500) - 609.526, (1)
- 3 Precious Metal Dealers, Receiving Stolen Goods (over \$300) - 609.526, 2nd or subs. violations
- 1 Receiving Stolen Goods (over \$2,500) - 609.53
- +1 Riot 2 - 609.71, subd. 2
- Security Violations (under \$2,500) - 80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3 (a) & (b)
- 1 Sports Bookmaking - 609.75, subd. 7
- Tampering with Fire Alarm System (results in bodily harm) - 609.686, subd. 2
- Tax Evasion Laws - 289A.63
- Tear Gas & Tear Gas Compounds - 624.731, subd. 8
- 1 Theft Crimes - Over \$2,500 (*See Theft Offense List*)
- Theft of Controlled Substances - 609.52, subd. 3 (3) (b)
- 1 Theft of Motor Vehicle - 609.52, subd. 2(1)



|    |    |  |
|----|----|--|
|    |    | Theft of Public Records - 609.52                         |
|    |    | Theft of Trade Secret - 609.52, subd. 2 (8)              |
| II | +1 | Transfer Pistol to Ineligible Person - 624.7141, subd. 2 |
|    | +1 | Transfer Pistol to Minor - 624.7132, subd. 15 (b)        |
|    |    | Unauthorized Presence at Camp Ripley - 609.396, subd. 2  |

*The Commission proposes to combine the current severity levels I and II by maintaining the severity level II recommended sentences. This proposal essentially increases the severity level of all offenses currently ranked at severity level I. The person offenses ranked at this level all carry relatively low statutory maximums (1 year and 1 day) or they are offenses that involve repeated misdemeanor behavior or misdemeanor behavior against certain types of victims. Also included at this level are most of the property crimes involving a loss of under \$2,500.*

- +1 Accidents - 169.09, subd. 14 (b) (2)
- Aggravated Forgery (misc) (non-check) - 609.625; 609.635; 609.64
- +1 Aiding Offender to Avoid Arrest - 609.495
- +1 Assault 3 - 609.223, subd. 2 & 3
- +1 Assault 4 - 609.2231, subd. 1 & 3
- +1 Assault 5 (3rd or subsequent violation) - 609.224, subd. 4
- +1 Assault Weapon in Public if Under 21 - 624.7181, subd. 2
- +1 Assaults Motivated by Bias - 609.2231, subd. 4 (b)
- Bribery of Participant or Official in Contest - 609.825, subd. 2
- 3 Bringing Stolen Goods into State (\$1,000 - \$2,500) - 609.525
- 2 Bringing Stolen Goods into State (\$301 - \$999) - 609.525
- +1 Bullet-Resistant Vest During Commission of Crime - 609.486
- +1 Cable Communication Systems Interference - 609.80, subd. 2
- +1 Certification for Title on Watercraft - 86B.865, subd. 1
- +1 Check Forgery (less than \$200) - 609.631, subd. 4 (3) (b)
- Check Forgery (\$200 - \$2,500) - 609.631, subd. 4 (3) (a)
- +1 Child Neglect/Endangerment - 609.378
- Coercion (\$300 - \$2,500) - 609.27, subd. 1 (2), (3), (4), & (5)
- Controlled Substance in the Fifth Degree - 152.025
- +1 Criminal Damage to Property Motivated by Bias - 609.595, subd. 1a, (a)
- +1 Crime Committed for Benefit of Gang - 609.229, subd. 3 (c)
- +1 Criminal Penalties Regarding the Activities of Corporations - 300.60
- Damage to Property - 609.595, subd. 1 (2), (3), & (4)
- +1 Dangerous Weapons on School Property - 609.66, 1d
- +1 Depriving Another of Custodial or Parental Rights - 609.26, subd. 6 (1)
- +1 Discharge of Firearm at Unoccupied Transit Vehicle/Facility - 609.855, subd. 5
- +1 Discharge of Firearm - 609.66, subd. 1a (a) (2) & (3)
- +1 Duty to Render Aid (substantial bodily harm) - 609.662, subd. 2 (b) (2)
- Duty to Render Aid (death or great bodily harm) - 609.662, subd. 2(b)(1)
- +1 Escape from Custody - 609.485, subd, 4 (2)
- +1 Excise Tax on Alcoholic Beverages - 297C.13, subd. 1



- +1 Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols - 297D.09, subd. 1
- +1 Failure to Affix Stamp on Schedule IV Substances - 297D.09, subd. 1
- Failure to Affix Stamp; Remaining Schedule I, II, & III Non-Narcotics-297D.09, Subd. 1
- +1 Failure to Appear in Juvenile Court - 609.49, subd. 1a
- +1 Financial Transaction Card Fraud - 609.821, subd. 2 (3) & (4)
- +1 Fleeing A Police Officer - 609.487, subd. 3
- +1 Forgery - 609.63; and Forgery Related Crimes (*See Forgery Related Offense List*)
- Gambling Regulations - 349.2127, subd. 1-6; 349.22, subd. 4
- +1 Insurance Regulations - 62A.41
- +1 Interference with Transit Operator - 609.855, subd. 2 (c) (1)
- +1 Leaving State to Evade Establishment of Paternity - 609.31
- +1 Malicious Punishment of a Child (bodily harm) - 609.377
- +1 Motor Vehicle Taxes - 296.25, subd. 1(b)
- 1 Motor Vehicle Use Without Consent - 609.52, subd. 2 (17)
- Negligent Fires (damage greater than \$2,500) - 609.576, subd. 1 (b) (3)
- +1 Pistol without a Permit (2nd or subsequent violation) - 624.714, subd. 1 (a)
- 2 Precious Metal Dealers, Receiving Stolen Goods (\$301 - \$2,500) - 609.526 (1) & (2)
- Precious Metal Dealers, Regulatory Provisions - 325F.743
- +1 Prize Notices and Solicitations - 325F.755, subd. 7
- 1 Receiving Stolen Goods (\$2,500 or less) - 609.53
- +1 Remove or Alter Serial Number on Firearm - 609.667
- +1 Sale of Simulated Controlled Substance - 152.097
- Solicitation of Prostitution - 609.322, subd. 3
- +1 Tampering with a Fire Alarm (potential for bodily harm) - 609.686, subd. 2
- Telecommunications Fraud - 609.893, subd. 2
- +1 Terroristic Threats - 609.713, subd. 3 (a)
- Terroristic Threats - 609.713, subd. 2
- +1 Theft from Abandoned or Vacant Building (\$500 or less) - 609.52, subd. 3 (3) (d) (iii)
- 1 Theft Crimes - \$2,500 or less (*See Theft Offense List*)
- Theft - Looting - 609.52
- +1 Unlawful Acts Involving Liquor - 340A.701
- +1 Voting Violations - Chapter 201, 203B, & 204C
- Wildfire Arson - 609.5641, subd. 1

### ***Theft Offense List***

It is recommended that the following property crimes be treated similarly. This is the list cited for the two THEFT CRIMES (\$2,500 or less and over \$2,500) in the Offense Severity Reference Table.

Assistance Transaction Card Fraud  
256.986, subd. 3

Computer Damage  
609.88

Computer Theft  
609.89

Defeating Security on Personalty  
609.62

Defeating Security on Realty  
609.615

Defrauding Insurer  
609.611

Embezzlement of Public Funds  
609.54

Failure to Pay Over State Funds  
609.445

False Declaration of Claim  
471.392

False Representations  
268.18, subd. 3

Federal Food Stamp Program  
393.07, subd. 10

Financial Transaction Card Fraud  
609.821, subd. 2(1), (2), (5), (6), (7), & (8)

Fraud in Obtaining Credit  
609.82  
Medical Assistance Fraud  
609.466

Permitting False Claims Against Government  
609.455

Presenting False Claims to Public Officer or Body  
609.465

Rustling and Livestock Theft  
609.551



Telecommunications and Information Services Fraud  
609.893, subd. 1

Theft  
609.52, all subdivisions

Theft by Soldier of Military Goods  
192.36

Workers Compensation Fraud  
176.178

Wrongfully Obtaining Assistance  
256.98

## Limiting the Misdemeanor and Gross Misdemeanor Offense List to Prior Person/Violent Offenses

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The following are the misdemeanor and gross misdemeanor offenses included in the misdemeanor list effective August 1, 1994.

Arson 3rd Degree, 609.563; subd. 2

Assault in the Fourth Degree, 609.2231, subd. 2, 4, 5, & 6

Assault in the Fifth Degree, 609.224

► Burglary 4th Degree, 609.582

Carrying Pistol, 624.714

► Check Forgery, 609.631

Contraband Articles Forbidden (Jail/Lock-up/Correctional Facility), 641.165

► Contributing to Delinquency of Minor, 260.315

Criminal Sexual Conduct 5th Degree, 609.3451

► Damage to Property, 609.595

Dangerous Weapons, 609.66

Fleeing a Police Office, 609.487

► Furnishing Liquor to Persons Under 21, 340A.503

Harassment/Stalking, 609.749, subd. 2

Indecent Exposure, 617.23

Interference with Privacy, 609.746

Letter, Telegram, or Package; Opening; Harassment, 609.795

Obscene or Harassing Telephone Calls, 609.79

► Possession of Small Amount of Marijuana in Motor Vehicle, 152.027

► Receiving Stolen Property, 609.53

► Theft, 609.52, subd. 2(1)

Trespass (gross misdemeanor), 609.605

Violation of Harassment Restraining Order, 609.748

Violating an Order for Protection, 518B.01; subd. 14

► Indicates offenses that the subcommittee recommends removing from the list.



**PERSON CRIME OFFENSE LIST:  
ELIGIBILITY FOR MISDEMEANOR/GROSS MISDEMEANOR POINT**

Sentencing Guidelines Commission

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|  |  |
|--|--|
| Accidents - 169.09 subd. 14 a & b (1)(2)                     | Harassment/Stalking 609.749 subd. 3, 4, & 5                    |
| Adulteration - 609.687                                       | Injury of an Unborn Child/Commission of Crime - 609.268        |
| Aggravated Robbery - 609.245                                 | Incest - 609.365   |
| Aiding Suicide - 609.215                                     | Kidnapping - 609.25  |
| Arson 1 - 609.561  | Malicious Punishment of Child - 609.377                        |
| Assault 1 - 609.221  | Manslaughter 1 - 609.20  |
| Assault 2 - 609.222  | Manslaughter 2 - 609.205                                       |
| Assault 3 - 609.223  | Manslaughter 1 of an Unborn Child - 609.2664                   |
| Assault 4 - 609.2231 subd. 1, 3 & 4(b)                       | Manslaughter 2 of an Unborn Child - 609.2665                   |
| Assault 5 - 609.224 subd. 4                                  | Murder 1 (Attempt/Conspiracy) - 609.185                        |
| Assault 1 of an Unborn Child - 609.267                       | Murder 2 - 609.19  |
| Assault 2 of an Unborn Child - 609.2671                      | Murder 3 - 609.195   |
| Bigamy - 609.355   | Murder 2 of an Unborn Child - 609.2662                         |
| Burglary 1 with Weapon or Assault - 609.582                  | Murder 3 of an Unborn Child - 609.2663                         |
| Child Neglect/Endangerment - 609.378                         | Obscenity re: Minors 617.246 & 617.247                         |
| Coercion - 609.27  | Prostitution (Patron) - 609.324 subd. 1                        |
| Criminal Vehicular Homicide and Injury - 609.21              | Receiving Profit from Prostitution - 609.323 subd. 1, 1a & 2   |
| Criminal Sexual Conduct 1 - 609.342                          | Riot 1 & 2 - 609.71  |
| Criminal Sexual Conduct 2 - 609.343                          | Simple Robbery - 609.24  |
| Criminal Sexual Conduct 3 - 609.344                          | Solicitation of Children to Engage in Sexual Conduct - 609.352 |
| Criminal Sexual Conduct 4 - 609.345                          | Solicitation of Prostitution - 609.322 subd. 1, 1a, 2, & 3     |
| Death-Unborn Child in Commission of Crime - 609.268 subd. 1  | Tampering with Witness - 609.498 subd. 1                       |
| Depriving Another of Cust./Parental Rights - 609.26          | Terroristic Threats - 609.713                                  |
| Discharge Firearm-Occup. Tran. Veh./Facil. - 609.855 subd. 5 | Use of Drugs to Injure or Facilitate Crime - 609.235           |
| Drive-By Shooting - 609.66 subd. 1e (a)                      |  |
| Duty to Render Aid(death/GBH/SBH) - 609.662 subd. 2(b)(1)(2) |  |
| Escape from Custody with Violence - 609.485 subd. 4(5)       |  |
| False Imprisonment - 609.255                                 |  |
| Fleeing a Peace Officer - 609.487 subd. 4                    |  |
| Great Bodily Harm Caused by Distribution of Drugs -609.228   |  |

## IMPACT ON CORRECTIONAL RESOURCES

The following tables summarize the impact on correctional resources of the modification package recommended by the Sub-Committee.

### Summary of Bed Savings

|  |                |
|--|----------------|
| Estimated Number of Prison Beds Saved: | 538 beds saved |
|--|----------------|

---

|  |    |
|--|----|
| Number of offenders who currently receive probation who would now receive a prison sentence: | 11 |
|--|----|

|  |     |
|--|-----|
| Number of offenders who would continue to be sentenced to prison, but would serve additional time: | 178 |
|--|-----|

|  |     |
|--|-----|
| Number of offenders who would no longer receive a prison sentence: | 329 |
|--|-----|

|  |     |
|--|-----|
| Number of offenders who would continue to be sentenced to prison, but would serve less time: | 448 |
|--|-----|

Prison populations are on the rise in Minnesota due primarily to dramatic increases in sentences for violent offenders and Minnesota will need to provide more prison space. Based on the most recent prison population projections and taking into account planned expansion of over 900 beds in existing facilities, the Department of Corrections estimates that by mid 1997 there will be a shortage of approximately 400 prison beds. Even with the construction of a new 800 bed prison, there will be a shortage of nearly 300 beds by the year 2001. After 2001, the prison bed shortage will continue to grow.

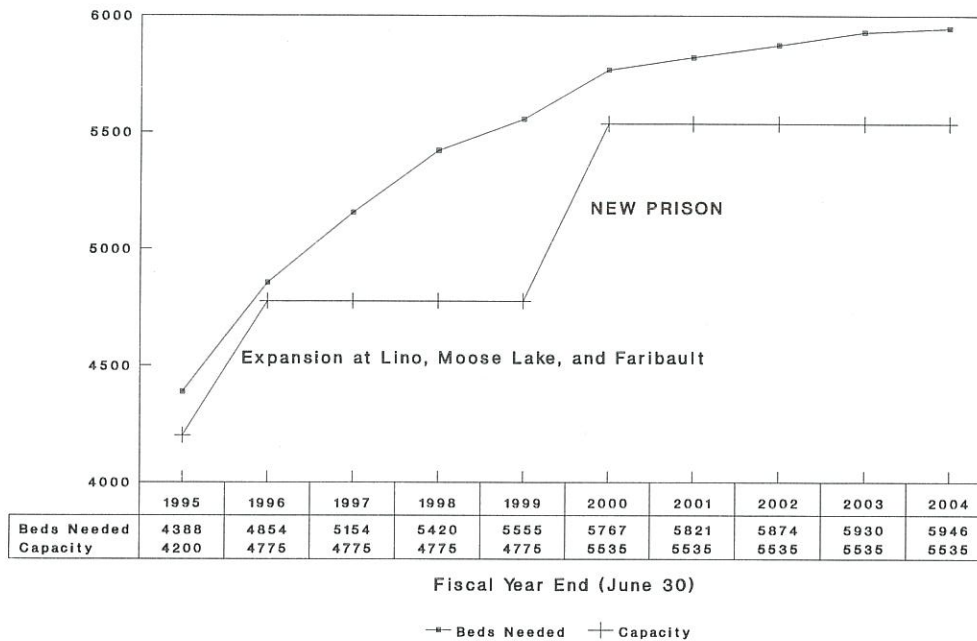
Implementation of the Sub-Committee's proposal would eliminate the need to build one entire new prison by reducing the need to use scarce and expensive prison resources for as many property offenders. The state will **save 14.1 million dollars per year** in prison operating costs with an additional savings of 45 to 50 million dollars in construction costs. The prison operating costs alone are three times as much as what it would cost to keep the 329 offenders noted above on probation for three years with six months to serve in a local jail.

*Note: The above estimate does not take into account the increased and decreased durations that will be served by probation revocations. There are 1,200 offenders who will continue to receive probation, but whose presumptive duration will decrease as a result of the modifications. There are 755 offenders who will continue on probation with higher presumptive durations. The estimate also does not take into account any impact additional probation cases may have on revocation rates.*

The following chart displays the projected prison needs for males over the next five years compared with the planned capacity. The capacity figures include the planned expansions at Lino Lakes, Moose Lake, Faribault and the new 800 bed prison. Even with the planned prison system expansions there will be shortages. The second chart shows the projected prison bed shortages with and without the impact of the Commission's proposal. The Commission's proposal, if implemented in August 1995, will significantly reduce these shortages.

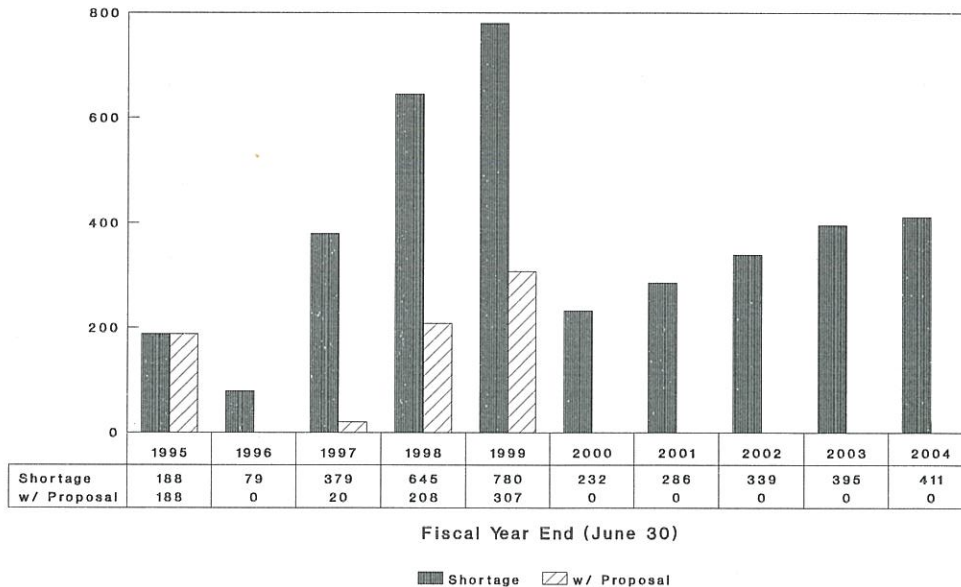


## Projected Male Prison Needs & Capacity\* 1995 - 2004



Source: MSGC and Dept. of Corrections  
 \* Capacity includes planned expansions  
 and planned new prison

## Projected Male Prison Bed Shortage With and Without Commission Proposal 1995 - 2004



Source: MSGC and Dept. of Corrections  
 Assumes August 1, 1995 Effective Date  
 for Commission's Proposal

**Impact on Sentences  
for Each Type of Current Offense**

| Impact on Sentence                      | Person          | Property        | Drug            | Other         | All Offense Types |
|---|-----------------|-----------------|-----------------|---------------|-------------------|
| No Change                               | 67%<br>(1,626)  | 67%<br>(3,169)  | 78%<br>(1,435)  | 60%<br>(188)  | 69%<br>(6,418)    |
| Continue Probation - Higher Presumptive | 22%<br>(537)    | 1%<br>(65)      | 3%<br>(58)      | 20%<br>(64)   | 8%<br>(724)       |
| Continue Probation - Lower Presumptive  | 3%<br>(79)      | 19%<br>(886)    | 11%<br>(200)    | 4%<br>(12)    | 13%<br>(1,177)    |
| Prison - Previously Probation           | 0%<br>(9)       | 0%<br>(1)       | 0%<br>(0)       | 0<br>(1)      | 0%<br>(11)        |
| Prison - Serve Additional Time          | 4%<br>(96)      | 1%<br>(29)      | 1%<br>(25)      | 9%<br>(28)    | 2%<br>(178)       |
| Prison - Serve Less Time                | 3%<br>(74)      | 6%<br>(304)     | 5%<br>(98)      | 4%<br>(12)    | 5%<br>(488)       |
| Receive Probation - Previously Prison   | 1%<br>(17)      | 6%<br>(288)     | 1%<br>(14)      | 3%<br>(10)    | 4%<br>(329)       |
| Total                                   | 100%<br>(2,438) | 100%<br>(4,742) | 100%<br>(1,830) | 100%<br>(315) | 100%<br>(9,325)   |

**Distribution by Type of Offense  
of Each Type of Impact on Sentences**

| Impact on Sentence                      | Person         | Property       | Drug           | Other       | Total          |
|---|----------------|----------------|----------------|-------------|----------------|
| No Change                               | 25%<br>(1,626) | 49%<br>(3,169) | 22%<br>(1,435) | 3%<br>(188) | 100%<br>(6418) |
| Continue Probation - Higher Presumptive | 74%<br>(537)   | 9%<br>(65)     | 8%<br>(58)     | 9%<br>(64)  | 100%<br>(724)  |
| Continue Probation - Lower Presumptive  | 7%<br>(79)     | 75%<br>(886)   | 17%<br>(200)   | 1%<br>(12)  | 100%<br>(1177) |
| Prison - Previously Probation           | 82%<br>(9)     | 9%<br>(1)      | 0%<br>(0)      | 0<br>(1)    | 100%<br>(11)   |
| Prison - Serve Additional Time          | 54%<br>(96)    | 16%<br>(29)    | 14%<br>(25)    | 16%<br>(28) | 100%<br>(178)  |
| Prison - Serve Less Time                | 15%<br>(74)    | 62%<br>(304)   | 20%<br>(98)    | 3%<br>(12)  | 100%<br>(488)  |
| Receive Probation - Previously Prison   | 5%<br>(17)     | 88%<br>(288)   | 4%<br>(14)     | 3%<br>(10)  | 100%<br>(329)  |



**Impact of Proposal: New Felony Probation Cases - by County  
As Compared to Current Sentencing Practices  
(Based on 1992 Sentencing Data)**

| <b>County</b> | <b>Total # of<br/>Felony<br/>Convictions<br/>Each Year</b> | <b># Currently<br/>Receiving<br/>Prison<br/>Sentences</b> | <b># Currently<br/>Receiving<br/>Non-Prison<br/>Sentences</b> | <b>Number of<br/>New Probation<br/>Cases Each Year</b> |
|---------------|--|---|---|--|
| Aitkin        | 51   | 7   | 44  | 0  |
| Anoka         | 519  | 70  | 449   | 14   |
| Becker        | 84   | 15  | 69  | 4  |
| Beltrami      | 67   | 11  | 56  | 0  |
| Benton        | 95   | 17  | 78  | 3  |
| Big Stone     | 6  | 1   | 5   | 0  |
| Blue Earth    | 64   | 18  | 46  | 5  |
| Brown         | 34   | 11  | 23  | 1  |
| Carlton       | 60   | 13  | 47  | 3  |
| Carver        | 44   | 7   | 37  | 0  |
| Cass          | 80   | 11  | 69  | 2  |
| Chippewa      | 10   | 1   | 9   | 0  |
| Chisago       | 60   | 5   | 55  | 1  |
| Clay          | 67   | 12  | 55  | 0  |
| Clearwater    | 17   | 2   | 15  | 0  |
| Cook          | 5  | 1   | 4   | 0  |
| Cottonwood    | 37   | 6   | 31  | 0  |
| Crow Wing     | 100  | 21  | 79  | 7  |
| Dakota        | 579  | 84  | 495   | 14   |
| Dodge         | 13   | 1   | 12  | 0  |
| Douglas       | 71   | 18  | 53  | 8  |
| Faribault     | 39   | 10  | 29  | 0  |
| Fillmore      | 21   | 1   | 20  | 0  |
| Freeborn      | 53   | 10  | 43  | 4  |
| Goodhue       | 85   | 14  | 71  | 3  |
| Grant         | 3  | 0   | 3   | 0  |
| Hennepin      | 2,370  | 642   | 1,728   | 118  |
| Houston       | 8  | 0   | 8   | 0  |
| Hubbard       | 39   | 10  | 29  | 2  |



| County            | Total # of<br>Felony<br>Convictions<br>Each Year | # Currently<br>Receiving<br>Prison<br>Sentences | # Currently<br>Receiving<br>Non-Prison<br>Sentences | Number of<br>New Probation<br>Cases Each Year |
|-------------------|--|---|---|---|
| Isanti            | 62   | 10  | 52  | 2   |
| Itasca            | 119  | 28  | 91  | 4   |
| Jackson           | 37   | 4   | 33  | 0   |
| Kanabec           | 45   | 7   | 38  | 1   |
| Kandiyohi         | 43   | 12  | 31  | 0   |
| Kittson           | 5  | 1   | 4   | 1   |
| Koochiching       | 15   | 1   | 14  | 0   |
| Lac Qui Parle     | 6  | 2   | 4   | 0   |
| Lake              | 22   | 3   | 19  | 0   |
| Lake of the Woods | 2  | 0   | 2   | 0   |
| LeSueur           | 14   | 3   | 11  | 0   |
| Lincoln           | 8  | 6   | 2   | 0   |
| Lyon              | 54   | 8   | 46  | 1   |
| McLeod            | 84   | 21  | 63  | 6   |
| Mahnomen          | 11   | 3   | 8   | 1   |
| Marshall          | 15   | 2   | 13  | 0   |
| Martin            | 54   | 7   | 47  | 0   |
| Meeker            | 45   | 8   | 37  | 3   |
| Mille Lacs        | 34   | 6   | 28  | 2   |
| Morrison          | 35   | 3   | 32  | 0   |
| Mower             | 58   | 8   | 50  | 0   |
| Murray            | 6  | 1   | 5   | 1   |
| Nicollet          | 27   | 7   | 20  | 2   |
| Nobles            | 44   | 5   | 39  | 1   |
| Norman            | 8  | 1   | 7   | 0   |
| Olmsted           | 121  | 35  | 86  | 2   |
| Otter Tail        | 126  | 21  | 105   | 5   |
| Pennington        | 34   | 6   | 28  | 2   |
| Pine              | 56   | 19  | 37  | 1   |
| Pipestone         | 15   | 0   | 15  | 0   |
| Polk              | 129  | 26  | 103   | 2   |
| Pope              | 13   | 5   | 8   | 2   |
| Ramsey            | 1,499  | 310   | 1,189   | 50  |



| County          | Total # of<br>Felony<br>Convictions<br>Each Year | # Currently<br>Receiving<br>Prison<br>Sentences | # Currently<br>Receiving<br>Non-Prison<br>Sentences | Number of<br>New Probation<br>Cases Each Year |
|-----------------|--|---|---|---|
| Red Lake        | 17   | 1   | 16  | 0   |
| Redwood         | 38   | 7   | 31  | 0   |
| Renville        | 9  | 2   | 7   | 0   |
| Rice            | 75   | 6   | 69  | 1   |
| Rock            | 5  | 1   | 4   | 0   |
| Roseau          | 17   | 2   | 15  | 0   |
| St. Louis       | 459  | 87  | 372   | 15  |
| Scott           | 75   | 9   | 66  | 2   |
| Sherburne       | 91   | 20  | 71  | 3   |
| Sibley          | 10   | 2   | 8   | 1   |
| Stearns         | 215  | 44  | 171   | 7   |
| Steele          | 47   | 10  | 37  | 2   |
| Stevens         | 12   | 0   | 12  | 0   |
| Swift           | 7  | 0   | 7   | 0   |
| Todd            | 46   | 7   | 39  | 1   |
| Traverse        | 4  | 0   | 4   | 0   |
| Wabasha         | 15   | 0   | 15  | 0   |
| Wadena          | 37   | 8   | 29  | 0   |
| Waseca          | 19   | 4   | 15  | 0   |
| Washington      | 326  | 69  | 257   | 13  |
| Watsonwan       | 20   | 5   | 15  | 1   |
| Wilkin          | 25   | 7   | 18  | 0   |
| Winona          | 97   | 12  | 85  | 2   |
| Wright          | 123  | 22  | 101   | 2   |
| Yellow Medicine | 9  | 2   | 7   | 1   |
| <b>TOTAL</b>    | <b>9,325</b>                                     | <b>1,925</b>                                    | <b>7,400</b>  | <b>329</b>                                    |



The assumptions and calculations for the cost estimates made by the Minnesota Sentencing Guidelines Commission in reference to the proposal are summarized below as a statewide figure. The costs for probation and jail are broken down separately for each county followed by a table that displays total costs for each county. A statewide average jail per diem obtained from the Minnesota Sheriff's Association is used to assess costs to provide a consistent measure from county to county. Some counties have special circumstances regarding limited jail space and may face the need to construct new facilities or create new alternative sanctions. Individual counties will need to express these special problems to policymakers.

#### **Assumptions:**

Prison Cost = \$71.83 per diem (source: Dept. of Corrections)

Jail Cost = \$58.50 per diem (source: MN Sheriff's Association)

Annual Probation Officer Salary (including fringe benefits and support services) = \$73,518  
(source: Probation Standards Task Force)

Case Load = 60 offenders per agent (source: Probation Standards Task Force)

Length of Probation = 3 years (MSGC estimate with county input)

Length of Jail Time Served = 6 months (MSGC estimate with county input)

#### **Prison Cost Savings:**

538 fewer **prison** beds needed each year

$538 \times \$71.83 = \$38,644.54$  per day

$\$38,644.54 \times 365 \text{ days} = \mathbf{\$14,105,257 \text{ fewer dollars needed}}$

#### **Local Costs Incurred:**

329 more offenders recommended **probation** each year

$329 \times 3 \text{ (years of probation)} = 987 \text{ accumulated offenders}$

$987 \div 60 \text{ (case load size)} = 16.45 \text{ new probations officers}$

$16.45 \times \$73,518 \text{ (salary +)} = \mathbf{\$1,209,371 \text{ more dollars needed}}$

329 more offenders will likely serve an avg. of 6 months in **jail**

$329 \times 180 \text{ days} = 59,220 \text{ jail days}$

$59,220 \text{ jail days} \times \$58.50 \text{ per diem} = \mathbf{\$3,464,370 \text{ more dollars needed}}$

$\mathbf{\$1,209,371 \text{ (probation)} + \$3,464,370 \text{ (jail)} = \$4,673,741}$

#### **Net Savings:**

$\mathbf{\$14,105,257 - \$4,673,741 = \$9,431,516}$

## Impact of MSGC Proposal

### Additional JAIL Days / Costs Assumes 180 Days Served and \$58.50 per diem

| County     | Number of New Probation Cases Each Year | Additional Jail Days | Estimated Cost |
|------------|---|----------------------|----------------|
| Aitkin     | 0                                       | 0                    | \$0            |
| Anoka      | 14                                      | 2,520                | \$147,420      |
| Becker     | 4                                       | 720                  | \$42,120       |
| Beltrami   | 0                                       | 0                    | \$0            |
| Benton     | 3                                       | 540                  | \$31,590       |
| Big Stone  | 0                                       | 0                    | \$0            |
| Blue Earth | 5                                       | 900                  | \$52,650       |
| Brown      | 1                                       | 180                  | \$10,530       |
| Carlton    | 3                                       | 540                  | \$31,590       |
| Carver     | 0                                       | 0                    | \$0            |
| Cass       | 2                                       | 360                  | \$21,060       |
| Chippewa   | 0                                       | 0                    | \$0            |
| Chisago    | 1                                       | 180                  | \$10,530       |
| Clay       | 0                                       | 0                    | \$0            |
| Clearwater | 0                                       | 0                    | \$0            |
| Cook       | 0                                       | 0                    | \$0            |
| Cottonwood | 0                                       | 0                    | \$0            |
| Crow Wing  | 7                                       | 1,260                | \$73,710       |
| Dakota     | 14                                      | 2,520                | \$147,420      |
| Dodge      | 0                                       | 0                    | \$0            |
| Douglas    | 8                                       | 1,440                | \$84,240       |
| Faribault  | 0                                       | 0                    | \$0            |
| Fillmore   | 0                                       | 0                    | \$0            |
| Freeborn   | 4                                       | 720                  | \$42,120       |
| Goodhue    | 3                                       | 540                  | \$31,590       |
| Grant      | 0                                       | 0                    | \$0            |
| Hennepin   | 118                                     | 21,240               | \$1,242,540    |
| Houston    | 0                                       | 0                    | \$0            |



| County            | Number of New Probation<br>Cases Each Year | Additional<br>Jail Days | Estimated<br>Cost |
|-------------------|--|-------------------------|-------------------|
| Hubbard           | 2  | 360                     | \$21,060          |
| Isanti            | 2  | 360                     | \$21,060          |
| Itasca            | 4  | 720                     | \$42,120          |
| Jackson           | 0  | 0                       | \$0               |
| Kanabec           | 1  | 180                     | \$10,530          |
| Kandiyohi         | 0  | 0                       | \$0               |
| Kittson           | 1  | 180                     | \$10,530          |
| Koochiching       | 0  | 0                       | \$0               |
| Lac Qui Parle     | 0  | 0                       | \$0               |
| Lake              | 0  | 0                       | \$0               |
| Lake of the Woods | 0  | 0                       | \$0               |
| LeSueur           | 0  | 0                       | \$0               |
| Lincoln           | 0  | 0                       | \$0               |
| Lyon              | 1  | 180                     | \$10,530          |
| McLeod            | 6  | 1,080                   | \$63,180          |
| Mahnomen          | 1  | 180                     | \$10,530          |
| Marshall          | 0  | 0                       | \$0               |
| Martin            | 0  | 0                       | \$0               |
| Meeker            | 3  | 540                     | \$31,590          |
| Mille Lacs        | 2  | 360                     | \$21,060          |
| Morrison          | 0  | 0                       | \$0               |
| Mower             | 0  | 0                       | \$0               |
| Murray            | 1  | 180                     | \$10,530          |
| Nicollet          | 2  | 360                     | \$21,060          |
| Nobles            | 1  | 180                     | \$10,530          |
| Norman            | 0  | 0                       | \$0               |
| Olmsted           | 2  | 360                     | \$21,060          |
| Otter Tail        | 5  | 900                     | \$52,650          |
| Pennington        | 2  | 360                     | \$21,060          |
| Pine              | 1  | 180                     | \$10,530          |
| Pipestone         | 0  | 0                       | \$0               |
| Polk              | 2  | 360                     | \$21,060          |



| County          | Number of New Probation<br>Cases Each Year | Additional<br>Jail Days | Estimated<br>Cost  |
|-----------------|--|-------------------------|--------------------|
| Pope            | 2  | 360                     | \$21,060           |
| Ramsey          | 50   | 9,000                   | \$526,500          |
| Red Lake        | 0  | 0                       | \$0                |
| Redwood         | 0  | 0                       | \$0                |
| Renville        | 0  | 0                       | \$0                |
| Rice            | 1  | 180                     | \$10,530           |
| Rock            | 0  | 0                       | \$0                |
| Roseau          | 0  | 0                       | \$0                |
| St. Louis       | 15   | 2,700                   | \$157,950          |
| Scott           | 2  | 360                     | \$21,060           |
| Sherburne       | 3  | 540                     | \$31,590           |
| Sibley          | 1  | 180                     | \$10,530           |
| Stearns         | 7  | 1,260                   | \$73,710           |
| Steele          | 2  | 360                     | \$21,060           |
| Stevens         | 0  | 0                       | \$0                |
| Swift           | 0  | 0                       | \$0                |
| Todd            | 1  | 180                     | \$10,530           |
| Traverse        | 0  | 0                       | \$0                |
| Wabasha         | 0  | 0                       | \$0                |
| Wadena          | 0  | 0                       | \$0                |
| Waseca          | 0  | 0                       | \$0                |
| Washington      | 13   | 2,340                   | \$136,890          |
| Watsonwan       | 1  | 180                     | \$10,530           |
| Wilkin          | 0  | 0                       | \$0                |
| Winona          | 2  | 360                     | \$21,060           |
| Wright          | 2  | 360                     | \$21,060           |
| Yellow Medicine | 1  | 180                     | \$10,530           |
| <b>TOTAL</b>    | <b>329</b>                                 | <b>59,220</b>           | <b>\$3,464,370</b> |



## Impact of MSGC Proposal

### Additional PROBATION Costs

**Assumes Case Load of 60 / 3 yrs. Probation / \$73,518 Salary**

| <b>County</b> | <b>Number of New Probation Cases Each Year</b> | <b>Additional Agents</b> | <b>Estimated Cost</b> |
|---------------|--|--------------------------|-----------------------|
| Aitkin        | 0  | 0.00                     | \$0                   |
| Anoka         | 14   | 0.70                     | \$51,463              |
| Becker        | 4  | 0.20                     | \$14,704              |
| Beltrami      | 0  | 0.00                     | \$0                   |
| Benton        | 3  | 0.15                     | \$11,028              |
| Big Stone     | 0  | 0.00                     | \$0                   |
| Blue Earth    | 5  | 0.25                     | \$18,380              |
| Brown         | 1  | 0.05                     | \$3,676               |
| Carlton       | 3  | 0.15                     | \$11,028              |
| Carver        | 0  | 0.00                     | \$0                   |
| Cass          | 2  | 0.10                     | \$7,352               |
| Chippewa      | 0  | 0.00                     | \$0                   |
| Chisago       | 1  | 0.05                     | \$3,676               |
| Clay          | 0  | 0.00                     | \$0                   |
| Clearwater    | 0  | 0.00                     | \$0                   |
| Cook          | 0  | 0.00                     | \$0                   |
| Cottonwood    | 0  | 0.00                     | \$0                   |
| Crow Wing     | 7  | 0.35                     | \$25,731              |
| Dakota        | 14   | 0.70                     | \$51,463              |
| Dodge         | 0  | 0.00                     | \$0                   |
| Douglas       | 8  | 0.40                     | \$29,407              |
| Faribault     | 0  | 0.00                     | \$0                   |
| Fillmore      | 0  | 0.00                     | \$0                   |
| Freeborn      | 4  | 0.20                     | \$14,704              |
| Goodhue       | 3  | 0.15                     | \$11,028              |
| Grant         | 0  | 0.00                     | \$0                   |
| Hennepin      | 118  | 5.90                     | \$433,756             |



| <b>County</b>     | <b>Number of New Probation Cases Each Year</b> | <b>Additional Agents</b> | <b>Estimated Cost</b> |
|-------------------|--|--------------------------|-----------------------|
| Houston           | 0  | 0.00                     | \$0                   |
| Hubbard           | 2  | 0.10                     | \$7,352               |
| Isanti            | 2  | 0.10                     | \$7,352               |
| Itasca            | 4  | 0.20                     | \$14,704              |
| Jackson           | 0  | 0.00                     | \$0                   |
| Kanabec           | 1  | 0.05                     | \$3,676               |
| Kandiyohi         | 0  | 0.00                     | \$0                   |
| Kittson           | 1  | 0.05                     | \$3,676               |
| Koochiching       | 0  | 0.00                     | \$0                   |
| Lac Qui Parle     | 0  | 0.00                     | \$0                   |
| Lake              | 0  | 0.00                     | \$0                   |
| Lake of the Woods | 0  | 0.00                     | \$0                   |
| LeSueur           | 0  | 0.00                     | \$0                   |
| Lincoln           | 0  | 0.00                     | \$0                   |
| Lyon              | 1  | 0.05                     | \$3,676               |
| McLeod            | 6  | 0.30                     | \$22,055              |
| Mahnomen          | 1  | 0.05                     | \$3,676               |
| Marshall          | 0  | 0.00                     | \$0                   |
| Martin            | 0  | 0.00                     | \$0                   |
| Meeker            | 3  | 0.15                     | \$11,028              |
| Mille Lacs        | 2  | 0.10                     | \$7,352               |
| Morrison          | 0  | 0.00                     | \$0                   |
| Mower             | 0  | 0.00                     | \$0                   |
| Murray            | 1  | 0.05                     | \$3,676               |
| Nicollet          | 2  | 0.10                     | \$7,352               |
| Nobles            | 1  | 0.05                     | \$3,676               |
| Norman            | 0  | 0.00                     | \$0                   |
| Olmsted           | 2  | 0.10                     | \$7,352               |
| Otter Tail        | 5  | 0.25                     | \$18,380              |
| Pennington        | 2  | 0.10                     | \$7,352               |
| Pine              | 1  | 0.05                     | \$3,676               |
| Pipestone         | 0  | 0.00                     | \$0                   |



| <b>County</b>   | <b>Number of New Probation<br/>Cases Each Year</b> | <b>Additional<br/>Agents</b> | <b>Estimated<br/>Cost</b> |
|-----------------|--|------------------------------|---------------------------|
| Polk            | 2  | 0.10                         | \$7,352                   |
| Pope            | 2  | 0.10                         | \$7,352                   |
| Ramsey          | 50   | 2.50                         | \$183,795                 |
| Red Lake        | 0  | 0.00                         | \$0                       |
| Redwood         | 0  | 0.00                         | \$0                       |
| Renville        | 0  | 0.00                         | \$0                       |
| Rice            | 1  | 0.05                         | \$3,676                   |
| Rock            | 0  | 0.00                         | \$0                       |
| Roseau          | 0  | 0.00                         | \$0                       |
| St. Louis       | 15   | 0.75                         | \$55,139                  |
| Scott           | 2  | 0.10                         | \$7,352                   |
| Sherburne       | 3  | 0.15                         | \$11,028                  |
| Sibley          | 1  | 0.05                         | \$3,676                   |
| Stearns         | 7  | 0.35                         | \$25,731                  |
| Steele          | 2  | 0.10                         | \$7,352                   |
| Stevens         | 0  | 0.00                         | \$0                       |
| Swift           | 0  | 0.00                         | \$0                       |
| Todd            | 1  | 0.05                         | \$3,676                   |
| Traverse        | 0  | 0.00                         | \$0                       |
| Wabasha         | 0  | 0.00                         | \$0                       |
| Wadena          | 0  | 0.00                         | \$0                       |
| Waseca          | 0  | 0.00                         | \$0                       |
| Washington      | 13   | 0.65                         | \$47,787                  |
| Watonwan        | 1  | 0.05                         | \$3,676                   |
| Wilkin          | 0  | 0.00                         | \$0                       |
| Winona          | 2  | 0.10                         | \$7,352                   |
| Wright          | 2  | 0.10                         | \$7,352                   |
| Yellow Medicine | 1  | 0.05                         | \$3,676                   |
| <b>TOTAL</b>    | <b>329</b>   | <b>16.45</b>                 | <b>\$1,209,371</b>        |



## Impact of MSGC Proposal

### Total PROBATION and JAIL Costs - by County

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| County     | Estimated Cost<br>Probation | Estimated Cost<br>Jail | Estimated Cost<br>TOTAL |
|------------|-----------------------------|------------------------|-------------------------|
| Aitkin     | 0                           | 0                      | \$0                     |
| Anoka      | \$51,463                    | \$147,420              | \$198,883               |
| Becker     | \$14,704                    | \$42,120               | \$56,824                |
| Beltrami   | 0                           | 0                      | \$0                     |
| Benton     | \$11,028                    | \$31,590               | \$42,618                |
| Big Stone  | 0                           | 0                      | \$0                     |
| Blue Earth | \$18,380                    | \$52,650               | \$71,030                |
| Brown      | \$3,676                     | \$10,530               | \$14,206                |
| Carlton    | \$11,028                    | \$31,590               | \$42,618                |
| Carver     | 0                           | 0                      | \$0                     |
| Cass       | \$7,352                     | \$21,060               | \$28,412                |
| Chippewa   | 0                           | 0                      | \$0                     |
| Chisago    | \$3,676                     | \$10,530               | \$14,206                |
| Clay       | 0                           | 0                      | \$0                     |
| Clearwater | 0                           | 0                      | \$0                     |
| Cook       | 0                           | 0                      | \$0                     |
| Cottonwood | 0                           | 0                      | \$0                     |
| Crow Wing  | \$25,731                    | \$73,710               | \$99,441                |
| Dakota     | \$51,463                    | 147,420                | \$198,883               |
| Dodge      | 0                           | 0                      | \$0                     |
| Douglas    | \$29,407                    | \$84,240               | \$113,647               |
| Faribault  | 0                           | 0                      | \$0                     |
| Fillmore   | 0                           | 0                      | \$0                     |
| Freeborn   | \$14,704                    | \$42,120               | \$56,824                |
| Goodhue    | \$11,028                    | \$31,590               | \$42,618                |
| Grant      | 0                           | 0                      | \$0                     |
| Hennepin   | \$433,756                   | \$1,242,540            | \$1,676,296             |



| <b>County</b>     | <b>Estimated Cost<br/>Probation</b> | <b>Estimated Cost<br/>Jail</b> | <b>Estimated Cost<br/>TOTAL</b> |
|-------------------|-------------------------------------|--------------------------------|---------------------------------|
| Houston           | 0                                   | 0                              | \$0                             |
| Hubbard           | \$7,352                             | \$21,060                       | \$28,412                        |
| Isanti            | \$7,352                             | \$21,060                       | \$28,412                        |
| Itasca            | \$14,704                            | \$42,120                       | \$56,824                        |
| Jackson           | 0                                   | 0                              | \$0                             |
| Kanabec           | \$3,676                             | \$10,530                       | \$14,206                        |
| Kandiyohi         | 0                                   | 0                              | \$0                             |
| Kittson           | \$3,676                             | \$10,530                       | \$14,206                        |
| Koochiching       | 0                                   | 0                              | \$0                             |
| Lac Qui Parle     | 0                                   | 0                              | \$0                             |
| Lake              | 0                                   | 0                              | \$0                             |
| Lake of the Woods | 0                                   | 0                              | \$0                             |
| LeSueur           | 0                                   | 0                              | \$0                             |
| Lincoln           | 0                                   | 0                              | \$0                             |
| Lyon              | \$3,676                             | \$10,530                       | \$14,206                        |
| McLeod            | \$22,055                            | \$63,180                       | \$85,235                        |
| Mahnomen          | \$3,676                             | \$10,530                       | \$14,206                        |
| Marshall          | 0                                   | 0                              | \$0                             |
| Martin            | 0                                   | 0                              | \$0                             |
| Meeker            | \$11,028                            | \$31,590                       | \$42,618                        |
| Mille Lacs        | \$7,352                             | \$21,060                       | \$28,412                        |
| Morrison          | 0                                   | 0                              | \$0                             |
| Mower             | 0                                   | 0                              | \$0                             |
| Murray            | \$3,676                             | \$10,530                       | \$14,206                        |
| Nicollet          | \$7,352                             | \$21,060                       | \$28,412                        |
| Nobles            | \$3,676                             | \$10,530                       | \$14,206                        |
| Norman            | 0                                   | 0                              | \$0                             |
| Olmsted           | \$7,352                             | \$21,060                       | \$28,412                        |
| Otter Tail        | \$18,380                            | \$52,650                       | \$71,030                        |
| Pennington        | \$7,352                             | \$21,060                       | \$28,412                        |
| Pine              | \$3,676                             | \$10,530                       | \$14,206                        |
| Pipestone         | 0                                   | 0                              | \$0                             |



| <b>County</b>   | <b>Estimated Cost<br/>Probation</b> | <b>Estimated Cost<br/>Jail</b> | <b>Estimated Cost<br/>TOTAL</b> |
|-----------------|-------------------------------------|--------------------------------|---------------------------------|
| Polk            | \$7,352                             | \$21,060                       | \$28,412                        |
| Pope            | \$7,352                             | \$21,060                       | \$28,412                        |
| Ramsey          | \$183,795                           | \$526,500                      | \$710,295                       |
| Red Lake        | 0                                   | 0                              | \$0                             |
| Redwood         | 0                                   | 0                              | \$0                             |
| Renville        | 0                                   | 0                              | \$0                             |
| Rice            | \$3,676                             | \$10,530                       | \$14,206                        |
| Rock            | 0                                   | 0                              | \$0                             |
| Roseau          | 0                                   | 0                              | \$0                             |
| St. Louis       | \$55,139                            | \$157,950                      | \$213,089                       |
| Scott           | \$7,352                             | \$21,060                       | \$28,412                        |
| Sherburne       | \$11,028                            | \$31,590                       | \$42,618                        |
| Sibley          | \$3,676                             | \$10,530                       | \$14,206                        |
| Stearns         | \$25,731                            | \$73,710                       | \$99,441                        |
| Steele          | \$7,352                             | \$21,060                       | \$28,412                        |
| Stevens         | 0                                   | 0                              | \$0                             |
| Swift           | 0                                   | 0                              | \$0                             |
| Todd            | \$3,676                             | \$10,530                       | \$14,206                        |
| Traverse        | 0                                   | 0                              | \$0                             |
| Wabasha         | 0                                   | 0                              | \$0                             |
| Wadena          | 0                                   | 0                              | \$0                             |
| Waseca          | 0                                   | 0                              | \$0                             |
| Washington      | \$47,787                            | \$136,890                      | \$184,677                       |
| Watsonwan       | \$3,676                             | \$10,530                       | \$14,206                        |
| Wilkin          | 0                                   | 0                              | \$0                             |
| Winona          | \$7,352                             | \$21,060                       | \$28,412                        |
| Wright          | \$7,352                             | \$21,060                       | \$28,412                        |
| Yellow Medicine | \$3,676                             | \$10,530                       | \$14,206                        |
| <b>TOTAL</b>    | <b>\$1,209,371</b>                  | <b>\$3,464,370</b>             | <b>\$4,673,741</b>              |



**MINNESOTA SENTENCING GUIDELINES COMMISSION  
PUBLIC HEARING SUMMARY**

**November 16, 1994**

The public hearing was held at 3:00 p.m. on November 16, 1994 in Room 15 of the State Capitol. Commission members present were Julius Gernes, Judge Roger Klaphake, Judge Edward Wilson, Justice Sandra Gardebring, Jenny Walker, James Dege, Susan Lange, Stan Suchta and Commissioner Frank Wood. Jim Early, Assistant to the Attorney General, was also present.

Public attendance included: Will Mattson, St. Louis County Commissioner; Frank Swedzinski, Lincoln County Commissioner and President of the Association of Minnesota Counties; Gary Waller, St. Louis County Sheriff; James C. Backstrom, President, County Attorney's Association and Dakota County Attorney; Dick Erickson, MN Citizens Council; Mike Freeman, Hennepin County Attorney; Scott Swanson, Office of the State Public Defender; Kevin Burke, Chief Judge, Fourth Judicial District; Mark Carey, MCCAC/MICA, Dakota County Community Corrections; Jan Smaby; Bill Klumpp, Attorney General's Office; Al Quie; Prof. Richard Frase, University of MN Law School; Nancy Johnson, MADD; John Menke, Ramsey County Community Corrections; Judge R.A. Randall, Court of Appeals; Representative Wesley Skoglund; Kay Pranis, Restorative Justice Planner, Department of Corrections; Sigmund Fine, Hennepin County Adult Corrections, Kathleen Danielowski; Katie Niessen; Dan Cain, Eden Programs; Marvin Hartman; Roberta Weinand; Ronald Edwards; Carol Curtis; Donald Parks; Sherri Hayes; Cindy Kraemer, WATCH; Charles Foss; Janet Heiti; Pat Conley, Association of Minnesota Counties; Theodore Brown and James Frank, St. Paul Police Department; Lenette Dies; Doug Ruth, County Attorney; Ann Carrott, County Attorney; Michael Cable, County Attorney; Earl Mans, Cass County Attorney; Kathryn M. Keena, Lyon County Attorney; Mike Junge, McLeod County Attorney; Dick Arney, Washington County Attorney; Gary Karger, House of Representatives; Wayne Barber; Sally Caddy; Dawn Christopherson; Lorraine Dvorak; Helen E. Merrily; Steve Vial; and Michelle Raa.

Chairman Gernes explained that the purpose of the hearing was to accept public comment on the proposed sentencing guideline modifications published in the Notice of Public Hearing in the State Register. Specifically, these modifications include: the creation of a new severity level; adjustments in severity level rankings, limitation of the impact of prior misdemeanor and gross misdemeanor offenses; adjustment of durations across severity levels one through six; and the reversal of the order in which the severity levels appear on the sentencing guidelines grid. He stated that all interested persons would be allowed to speak and that both written and oral statements would be accepted. He noted that the commission and staff could ask questions of those testifying, and that those testifying were also free to ask questions of commission members and staff. Chairman Gernes explained that the record would be held open for five days following the public hearing to allow for additional written comments. He also noted that an audio recording was being made of the proceedings. Final action on the proposed modifications will be taken at the commission meeting scheduled for December 1, 1994 at 3:00 p.m. in Room 15 of the State Capitol. He stated that if the proposal is adopted it will be forwarded to the legislature.

Chairman Gernes stated that people interested in speaking would be asked to testify in the order in which they had registered and he requested that anyone interested in testifying who had not previously registered do so with the commission staff. Commission members then heard public testimony.

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**Frank Swedzinski, Lincoln County Commissioner and President of the Association of Minnesota Counties; Will Mattson, St. Louis County Commissioner; Gary Waller, Sheriff, St. Louis County; James C. Backstrom, President, County Attorney's Association and Dakota County Attorney**

The panel spoke against the proposed modifications. Frank Swedzinski testified that counties are concerned about cost shifts from state to local governments and about public safety. He noted that local jurisdictions must rely on property taxes and that local resources are already stretched too thin. He added that they already face the increased costs associated with the implementation of the new juvenile provisions (Extended Jurisdiction Juveniles). He stressed the importance of taking into account the impact on local resources as well as state resources.

Will Mattson stated that he concurred with the association's position. He stated that he wanted to stress that local jails are paid for with property taxes and that they estimated that the proposal will result in 15 additional jail inmates each day in St. Louis County. He requested that the commission consider the impact on local property tax payers.

Gary Waller stated that the public recognizes the need to imprison violent offenders, but that he has never heard it suggested that this be done by not dealing appropriately with other offenders, some of whom are career offenders. Mr. Waller stated that while the need for prison beds has increased, local incarceration rates have also increased. He stated that he is concerned that the funding will not pass through the legislature. He was concerned about the effect on public safety and stated that he did not support shifting costs to local property taxes.

James Backstrom stated that the County Attorney's Association was strongly opposed to the proposal. He stated that the proposal did not promote public safety and would erode public confidence in the system at a time when the public is demanding more accountability for criminal activity. He stated that they were opposed to the proposal to cut in half the penalty for the most serious drug offenders and to cut in half the weight given to property offenders.

Mr. Backstrom stated that the Dakota County Jail would need to house approximately 22 additional people and the cost would exceed \$600,000. He added that they would likely have to house some offenders elsewhere and the cost could exceed \$1 million. He stated that someone convicted of Theft under \$2,500 would need 14 priors before receiving a prison sentence. Someone convicted of \$2,500 or over would need 10 prior offenses. He stated that the proposal seemed to be driven by a desire to free up prison space for violent offenders. The top priority must be to protect public safety and prison must be used to hold major drug dealers and repeat property offenders. These offenders must also be held accountable.

Mr. Backstrom stated that they felt that the proposal goes beyond the legislative directive to study the guidelines in reference to furthering public safety and coordinating resources. The legislature requested options for consideration. He stated that the legislature is the appropriate spot for debate and discussion on a proposal with such wide ranging impact. He stated that more research on the impact is necessary, using more up-to-date data.

Justice Gardebring stated that the remarks seem to address two issues: an inappropriate shift of the burden for incarceration to counties and the length of sentences. She asks about the interaction between these two concerns, whether one concern was driving another and what their opinion of the proposal would be if the monetary issue was not so important.

Sheriff Waller responded that they did have two concerns. The first was public safety. He stated that the proposal seemed to be driven by the cost of beds and by making room for violent offenders. He stated that this need shouldn't be addressed at the expense of other serious offenses.



Justice Gardebring asked if they felt that the state should tap its resources to handle these cases. Sheriff Waller responded in the affirmative. Mr. Backstrom stated that these offenders are convicted of felony offenses, the offenses defined as the most serious by the state. He stated that it was also important to have prison sentences available for those with extensive histories.

Judge Klaphake requested that the cost estimates noted in the testimony be provided to the commission staff. Sheriff Waller and Mr. Backstrom stated that they would forward that information to the commission.

The panel also provided written testimony to the commission.

#### **Mike Freeman, Hennepin County Attorney**

Mr. Freeman spoke in opposition to the proposed modifications. He expressed concern that the commission was making major appropriation and policy decisions that impact both public safety and property taxes after only limited public scrutiny.

He expressed concern that appropriate funding would not be available, especially since counties will already be seeking more than \$55 million for probation services to reduce caseloads to a workable level. He questioned the chances of gaining this amount given the veto of a \$1 million increase last session. In addition, counties already need to seek funding for juvenile programming. He stated that the commission should assure the coordination of correctional resources before, not after, changing the sentencing policy. He suggested that the commission forward the proposal as an option to the legislature to be considered once probation services are adequately funded, juvenile justice reforms are funded, and a survey has been done of local facilities so that we know facilities are available to absorb the career property offenders that will not be in state prisons as a result of the proposal.

Mr. Freeman also stated that the commission must provide proof that the sanctions available at the local level will leave the public safer than the sanctions currently available. In particular, he expressed concern about the proposal to decrease sentences for drug offenders.

Mr. Freeman provided the commission with a written copy of his testimony.

#### **Scott Swanson, Office of the State Public Defender**

Mr. Swanson focused his remarks on the proposed changes to penalties for drug offenses and spoke in favor of the commission's proposal. Mr. Swanson stated that he worked almost exclusively with drug offense cases. He raised concerns about the impact of current laws, in particular current drug laws, on minorities. He stated that approximately half of all prisoners, and 2/3 of controlled substance prisoners, are minorities. He also expressed concern that in recent years Minnesota has increased sentences dramatically for drug offenders, in some ways inadvertently.

Mr. Swanson listed six ways in which Minnesota has inadvertently increased sentences for drug offenders: 1) Grounds for aggravated durational departures are subsumed by assumptions in statute; 2) Sentencing under State v. Hernandez is unfair because the statute presumes you are in the business of dealing drugs and that you are someone who will commit a series of offenses over time and punishes accordingly. The accumulation of history points under guidelines assumes that each offense is separate, distinct, and not part of a larger pattern; 3) Prosecutorial variance in charging results in some offenses being aggregated into more serious offenses; 4) The legislature lowered the thresholds for powder cocaine to that for crack resulting in what is factually a low/lower mid-level dealer being punished the way that wholesale and major supplier offenders once were punished; 5) The law was changed to include possession with intent to sell in the definition of sale; and 6) The definition of sale includes "agreement to sell."



Mr. Swanson urged the commission to bring the punishment for drug offenses more in line with the severity of the offense and to also re-examine the durational departure factors in light of the drug laws.

Mr. Swanson provided the commission with written comments.

### **Jan Smaby, citizen**

Jan Smaby, citizen and former chair of the commission, spoke in favor of the proposed modifications. She stated that the intent of the guidelines was never that they remain static, but that they were always meant to be open to modification and adjustment as necessary. She stated that she suspected that in today's political climate there were some who might suggest that the commission is being soft. She said that she had worked in the criminal justice system extensively and that this is simply not true. She stated that those who work in the system must speak with great honesty and with facts on the subject to harshness and severity.

Ms. Smaby expressed support for the reduction in the ranking of first degree drug offenses. She stated that one of the underlying principles of the guidelines is proportionality and the idea that the severity of the sanctions should increase in proportion to the severity of the offense. She stated that she could not view first degree drug crimes as seriously as the other offenses at that current severity level (e.g., Assault, Kidnapping with Great Bodily Harm, Murder 3 and Criminal Sexual Conduct). She added that it is time to fundamentally rethink the criminal justice system's response to drug use and drug crimes.

She stated that she also supported the proposal to treat Theft and Theft Related offenses the same. She stated that the claim that it would require 10 offenses before an offender was incarcerated is not true and noted that the original guidelines also faced the same charges nearly fifteen years ago.

Ms. Smaby stated that the myth continues to resurface that state prison is the only real sanction or punishment that exists, even though we know that a full range of sanctions are available and are used. She stated that the proposal provides an opportunity to educate the public about the range of sanctions that can be used with great effectiveness, and which often are far more effective than prison.

She added that the fiscal concerns that have been raised are very legitimate. She recommended that the commission, as aggressively and assertively as possible, should recommend to the legislature that funds for community corrections be increased. She added that there is precedent for this and noted that when the guidelines were first introduced she and the commission worked to have the charge-back provision removed and were able to obtain increased funds for community corrections.

### **Kevin Burke, Chief Judge, Fourth Judicial District**

Judge Burke spoke in support of the proposed changes and urged the commission to go ahead with the modifications promptly. He noted that this was the consensus of the bench in the Fourth Judicial District.

Judge Burke stated that the direction has been to simply put all the money into prisons, but that while the prison system is important, that is not the only role in the system. There is a need for a balanced response to correctional issues. He stated that under the proposal public safety will be promoted and that the county will have the ability to handle the cases. He stated that there are a variety of ways to punish and hold people accountable (e.g., electronic monitoring, community service, etc.).

Judge Burke added that he is very concerned about funding for probation officers and that this issue does need to be addressed. He stated that perhaps this proposal, which in some ways is very modest, could serve as a focus to urge the legislature to address these other needs.



**Mark Carey, MACCAC/MICA, Director of Dakota County Community Corrections**

Mr. Carey stated that the MACCAC/MICA supports the changes conceptually and agrees with the emphasis on increasing the proportion of prison beds used by violent offenders. He stated that their support was conditioned on full funding. He added that the changes should not be implemented until a full analysis of resource needs was completed and funding became available.

He stated that the complexity of the problem and complexity of the solutions to crime have not been clearly communicated to the public. He stated that the proposed policy is smart, tough, and brave and that prison space should be reserved for offenders who truly need prison. He stated that prison is not the only way to hold people accountable nor the only way to punish. He noted that many offenders want to serve their sentences in prison rather than be placed on intensive supervision programs because the programs are too tough.

He stated, however, that local corrections cannot shoulder the burden of funding the changes and that property taxes cannot be raised year after year. He added that he is co-chair of the Probation Standards Task Force and that they will be requesting \$56 million for funding probation officers, \$13 million less than what is necessary to build an 800 bed prison facility.

In response to a question from Justice Gardebring, Mr. Carey stated that he would be happy to forward to the commission an estimate of the costs of the proposal in Dakota County.

**Dick Erickson, Citizen's Council on Crime and Justice, President**

Mr. Erickson spoke in support of the proposed modifications stating that they were consistent with positions their organization has taken over the years. He stated that the changes would re-establish the principal of proportionality.

He stated that there is an infatuation with incarceration as the sole punishment. He stated that public safety is a concern, but noted that in areas where penalties are increased the results have been the need for more prison beds, not fewer crimes being committed.

Mr. Erickson stated that compared to other states, Minnesota is not a wimp when it comes to criminal penalties. He stated that our total control rate is 12th in the nation. He also noted that while Texas prison populations have increased 41% in the last eight years, Texas has moved from being the 24th worst state in terms of violence (in 1974) to being the 10th worst.

Mr. Erickson stated that he also supported the ongoing efforts to get more resources at the local level.

**Bill Klumpp, Attorney General's Office**

Mr. Klumpp distributed a letter from Attorney General Humphrey, opposing the proposed modification regarding property offenders and supporting increased sentences and the creation of a new severity level.

Mr. Klumpp stated that the legislative directive requested that the commission evaluate the guidelines and propose options. Instead the commission is proposing modifications which, as applied to today's prison population would result in the release of 330 inmates and shorten prison sentences for about 450. He stated that public safety includes safety of the person and of one's home and property. He stated that to emphasize prison for violent offenders does not mean that state prison should never be used to punish and hold accountable drug dealers and repeat and career property offenders. He stated that alternatives to maximum security prisons need to be developed and that the use of boot-camps and low



and medium level security prison should be expanded, as well as state prison work programs for nonviolent offenders.

Mr. Klumpp stated that the Attorney General opposes the recommendation to cut sentences for first degree drug offenders. He also opposes the reduction in the severity level of many property offenses. He stated that the proposal will severely curtail the use of the career criminal sentencing law (M.S. § 609.152, subd.3). He stated that eliminating the use of misdemeanors and gross misdemeanors to calculate the criminal history score of nonviolent offenders ignores an established record of criminal behavior and is neither philosophically sound or logical.

Mr. Klumpp stated that the Attorney General does support the creation of a new severity level and the longer sentences for the specified violent offenders.

#### **Al Quie, citizen**

Former Governor Quie said he supported the proposal because he believes that states, including Minnesota, have made a mistake by increasing their prison populations dramatically in recent years. He said that communities should take responsibility for the crime that occurs in that community.

Mr. Quie stated that research has shown that recidivism is reduced when offenders are able to maintain contact with families and that is better accomplished by keeping offenders in the community rather than sending them to state prisons where they will associate exclusively with other criminals. He also stated that the likelihood of a person going to prison increases if they were abused as children, if their parents were on welfare, or if one of their parents had been in prison. Therefore, keeping offenders in the community, united with their families and able to contribute to their support, could reduce crime in the future.

Mr. Quie added that the state should help pay for the added cost of keeping these offenders in the community.

#### **Richard Frase, Professor, University of Minnesota Law School**

Professor Frase spoke in favor of the proposal, stating that it represented sound public policy and was completely consistent with the legislation directing the commission to recommend guideline modifications "which will ensure that state correctional resources are reserved for violent offenders."

Professor Frase stated that the problem of prison overcrowding is critical in many other states and is going to become a problem in Minnesota if we don't do something about it. Severe overcrowding is not only unconstitutional, it is bad public policy because it can force states to resort to accelerated parole and other "back door" release mechanisms which in other states has resulted in the early release of violent offenders. Such "back-door" solutions increase the disparity between the prison terms judges impose and the length of time inmates actually serve. Professor Frase stated that when this occurs, eventually both the public and offenders lose respect for the sentencing process. He noted that other states are trying to address that problem by copying Minnesota's sentencing guidelines system which takes into account available correctional resources.

Professor Frase stated that there are hard choices that must be made and they should be made openly. Other forms of punishment should be considered. Punishment in the community is still punishment and in some cases can be more effective. Community based sanctions are restorative to the community and to crime victims.

Professor Frase explained that while the proposed modifications would increase costs at the county level and that increased state funding of community corrections is an essential part of the proposal, total state



costs will be much less than if non-violent offenders continue to be sent to prison at the current rates and durations. He stated that if the public prefers to see non-violent offenders sent to state prison, the legislature can reject the proposal and decide where to find the additional funding--whether to raise taxes and/or cut programs. These are choices about priorities and taxing levels which should be made honestly and openly.

Professor Frase stated that we need to continue to take responsibility for the sentences we impose and pay as we go, which is what the guidelines have allowed the state to do.

Professor Frase also provided the commission with written comments.

#### **Nancy Johnson, MADD**

Ms. Johnson stated that she wanted to address the proposed changes in the rankings for hit and run accident offenses. She stated that MADD wanted to thank the commission for proposing to increase the severity levels of these offenses. However, she stated that MADD did not feel that the commission had gone far enough and that the severity level for the offense involving death should carry a presumptive prison sentence. She stated that the accident offenses should be ranked the same as Criminal Vehicular Homicide and Injury because the behavior is grossly irresponsible, negligent and is a totally uncaring act.

Ms. Johnson stated that it was the opinion of law enforcement that the accident offenses rarely did not involve alcohol. She stated that the offender should not get a break for leaving the scene and making it difficult to prove they had been drinking. She also stated that if the driver was not drunk, there was no reason to leave someone to die or suffer more serious injury because the person didn't stay and try to get help. She stated that people must be made responsible for their actions.

#### **John Menke, Supervisor, Spruce Tree South Division, Ramsey County Community Corrections**

Mr. Menke thanked the commission for supporting additional state funding for local correctional resources. He emphasized that community services desperately needs not only probation officers, but also rehabilitation services.

Mr. Menke stated that while the proposal did toughen sentences for some violent offenders, it continued to downplay serious weapon offenses such as Felon in Possession of a Firearm, Dangerous Discharge of a Firearm, and Terroristic Threats. He noted that these were offenses where the behavior was indistinguishable from Assault Second Degree. He suggested that the commission make the presumptive disposition for these offenses prison when the offender had a previous felony conviction for a crime of violence.

Mr. Menke stated that his second area of concern was with the one-half point weight for previous felony offenses and the proposal to increase the number of offenses to which that would apply. He stated that he believed that the one-half point weight is a bad policy because it reduces overall respect for the system, results in scarce probation resources being focused on habitual offenders, and does not allow for state prison sentences for repeat felony behavior. He encouraged the commission to amend its criminal history policy and assign a full point to prior offenses at severity levels I and II.

Mr. Menke also stated that he was concerned that the proposal transfers responsibilities to local correctional facilities and to probation, neither of which are unlimited resources. He stated that the workhouse might not have the capacity to handle the additional offenders, or could handle them only with further reductions in Misdemeanor and Gross Misdemeanor sentences, which have already been shortened because of resource problems.



Mr. Menke stated that as a practitioner he was also concerned about what might seem to be a minor point: flipping the grid. He asked the commission not to flip the grid because practitioners were used to the existing grid and inaccuracies would increase if it was changed.

Mr. Menke concluded his remarks by saying that preserving prison space by leaving repetitive, career offenders in the community focuses scarce probation resources on these individuals, rather than on those offenders for whom such services may be more beneficial, more effective at reducing recidivism, and more effective at reducing the accumulation of criminal history points, thereby perhaps obviating the need for more jail and/or prison space.

Mr. Menke provided the commission with a written copy of his comments.

### **Judge R. A. Randall, Court of Appeals**

Judge Randall, a former commission member, stated that he supported the proposal because some tempering of the length of sentences is long overdue. He said that prisons punish people but do not prevent crime and that the only way to prevent crime is to raise children who are not criminals. He stated that public safety should be the overriding concern. He said that he believes that there is a causal connection between prisons and crime: longer sentences require more prisons and if the money for those prisons comes from programs such as education, the result could be an increase in crime. He noted that there is a direct empirical correlation between the degree of education in a state and low levels of violent crime.

Judge Randall stated that while Minnesota's population of 4.6 million had only grown slightly in the last two decades, the prison population was currently over 4,000. In 1974 the population was 1,200. Judge Randall suggested that one option was a return to indeterminate sentencing for offenders above the dispositional line (presumptive commits). Such a system would give more control to corrections officials, because some offenders could be kept for the maximum time and thus increase public safety, but many who are given long sentences under the guidelines could safely be released sooner.

Judge Randall stated that it should be explained to the public that longer sentences would not reduce crime because such policies take money away from prevention.

### **Representative Wesley Skoglund**

Representative Skoglund spoke against the proposed modifications. He said that over the past few years, people had begun to accept our sentencing system as sound, tough and fair. He stated that the proposal will undermine public confidence because it suggests that as prisons fill up offenders will be let out.

Representative Skoglund stated that his understanding of the motivation behind the legislation was to generate options and suggestions for the legislature to consider. He stated that instead of options, the legislature was being used as a front to make very dramatic changes in our sentencing system that will go into effect unless the legislature blocks it.

He stated that while the driving force behind the proposal may be to save money, in his opinion those savings by the state would be devoured and surpassed by the increased costs on the parts of counties. The counties will come to the legislature for funds and there will not be additional funds recommended by the Governor to meet these requests. He stated that the money would have to come from what is now going to the Department of Corrections, the Court system, and the Public Defense System, all of which are under funded.



Representative Skoglund noted that not all of the offenders being passed to the counties would be men, some women would be affected too. He stated that facilities for women cost as much as men's, but don't fill up as fast. He noted that this makes space for women offenders very costly.

Representative Skoglund stated that a previous witness had stated that the legislature does not adequately fund probation services. He said that he agrees that the state has not addressed the need for probation services, but that he would argue with the commission's report which says the legislature needs to adequately fund them. He stated that the legislature tried to do that and noted that in the previous session the original proposal for an increase of \$3 million had been cut to \$1 million in an effort to get the Governor to sign it but that the Governor had still vetoed it. He added that until the Governor puts this funding in his budget, the legislature will not be able to pass and implement anything.

Representative Skoglund also said that the commission's report should have dealt with the retroactivity issue and tried to estimate how many people would be released from prison. He stated that many witnesses had said that sentences had been increased in recent years, but that there had been many other attempts to increase sentences which had been fended off, in part because of confidence in the guidelines system. He warned that this proposal would work to undermine that confidence.

Representative Skoglund closed his testimony by urging the commission to reconsider its proposal because it would do nothing to increase public safety, nothing to increase public confidence and would not save money.

#### **Kay Pranis, Restorative Justice Planner, Department of Corrections**

Ms. Pranis stated that she would speak about the proposed changes in the context of the principles of restorative justice. She explained that restorative justice requires separating violent offenders from the community and thus the purpose of prison in a restorative justice approach is to hold violent offenders in a secure setting.

She stated that the proposed changes would increase the degree to which our prison resources are being used for violent offenders. She stated that all offenders must be held accountable to their victims and the community. For property offenders that kind of accountability can be more effectively achieved in the community through restitution, community service, and self improvement which could reduce the likelihood of reoffending. She stated that for repeat property offenders the community can exercise increasing control through a "community cell" through which highly structured and supervised conditions in the community, including electronic monitoring, placement in a residential facility, work, community service crews, participation in programs and treatment, can severely limit an offender's opportunity to commit another crime while keeping the offender engaged in paying restitution and contributing to the community.

Ms. Pranis stated that most non-violent offenders who go to prison will achieve very little reparation. She emphasized that curtailing chronic non-violent offending behavior through a "community cell" requires active engagement of the offender in multiple activities and frequent monitoring by corrections professionals and that simple probation will not suffice. She emphasized that it is therefore critical that field services and community corrections be provided adequate resources to do the job properly. The cost of a "community cell" is only a fraction of the cost of a prison cell but it is much more than the cost of standard probation.

Ms. Pranis said that the proposed modifications were very consistent with the movement toward restorative justice and consistent with the general good government practice of making the most effective use of expensive resources.

Ms. Pranis provided a written copy of her testimony.



**John C. Wallraff, Retired Judge**

Judge Wallraff spoke in favor of the proposed changes.

Judge Wallraff related to the commission information about a case in which an offender with no previous record was convicted of embezzlement of \$300,000 and was committed to prison for 11 years, a double durational departure. He stated that the offender was employed at the time of sentencing and could have kept his job if he had not been sent to prison and thus, could have been a contributing member of society and able to make any further restitution payment that were found to be owed, instead of costing the taxpayers many thousands of dollars. Judge Wallraff suggested that juries should be involved in determining whether sentences which are departures from the Guidelines should be imposed.

**Sigmund Fine, Hennepin County Adult Corrections Administrator**

Mr. Fine stated that he thought the commission's proposal, from a public policy standpoint, was sound and that he tentatively supported it. He said that his support is only tentative because of concerns regarding funding.

Mr. Fine estimated that the commission's proposal would result in the need for approximately 38 more beds in Hennepin County, but that the more serious impact would be on probation resources. He stated that in Hennepin County there are 22,000 people on the probation caseload and only 85 supervising agents, with another 51 agents working on Pre-Sentence Investigations. The 5,000 offenders in the highest risk category are under traditional supervision, most of the remaining offenders are in group supervision, and 6,000 are on administrative supervision where only record checks are done. Mr. Fine stated that he estimated that the commission's proposal would result in approximately 170 additional offenders on probation in Hennepin County at any given time and that this would mean a need for seven additional agents to supervise these offenders.

He stated that as the proposal goes forward, he would oppose it if it did not include the necessary funding.

Commissioner Wood noted that his preliminary budget proposal includes \$15 million as an incremental first step to get the needed money over the next three bienniums to address the caseload overcrowding problem. He stated that as the proposal goes forward he also would oppose it if it did not include increased local funding.

**Kathleen Danielowski, Citizen**

Ms. Danielowski stated that her ten year old was a victim of First and Second Degree Criminal Sexual Abuse which began when he was in kindergarten. She said that while the guidelines called for a prison sentence of 12 years for the offender, he will only serve 16 months in the Dakota County jail and will be released two days before Christmas. She stated that her son lives in fear of this man who will be released soon, wants the family to move, has nightmares, is angry, and his school grades have slipped. She said that it is unfair that her son must suffer from lack of self esteem, lack of sleep and appetite, lack of concentration, devastating fear of being alone, depression, mistrust and anger. She said that the offender is a determined fixated pedophile who has admitted abusing 22 victims.

Ms. Danielowski stated that sentences for violent crimes should be increased, not decreased. She said that it will make it more difficult for victims of violent offenses to heal if sentencing guidelines are reduced and they know the predators will be released even sooner. She also said that there should be restrictions on judge's abilities to depart downward from the guidelines.



**Katie Niessen, citizen**

Ms. Niessen expressed concerns about prisons being too easy on offenders. She stated that rather than decreasing sentences, sentences should be increased.

**Roberta Weinand, citizen**

Ms. Weinand described how an offender had swindled her, and others, out of their life savings through a contracting scheme. She expressed her frustrations and concerns about the court process and about the process for trying to recover what was stolen. She stated that given her experiences, she was very concerned when she heard about the proposal to reduce sentences. She wanted to encourage the system to change and improve.

**Ronald Edwards, citizen**

Mr. Edwards expressed concern about the impact of the criminal justice system on minorities. He stated that it is important for the commission and the system to focus on the impact and effect on people of color. He also urged policy makers to be honest about the issue and to acknowledge the importance of race as an issue in discussing the severity of sentencing.

**Carol Curtis, citizen**

Ms. Curtis expressed concern at the increasing number of laws and penalties passed. She stated that the lesser laws were being enforced at the expense of the other laws. She also stated that juries should have more of a say in how people are punished.